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IDAHO CODE

CONTAINING THE

GENERAL LAWS OF IDAHO ANNOTATED

ORIGINALLY PUBLISHED BY AUTHORITY OF
LAWS 1947, CHAPTER 224

REPUBLISHED BY AUTHORITY OF
LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the
Idaho Code Commission

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EXECUTIVE SECRETARY

CONSTITUTIONS, FEDERAL LAWS, HISTORICAL
DOCUMENTS, TABLES

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PUBLISHER'S NOTE

Since the publication in 1993 of this volume, many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for this volume has made it necessary to revise this volume. Accordingly, this replacement volume is issued with the approval and under the direction of the Idaho Code Commission.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, court decisions are now being read as they are released by the courts. A consequence of this more current reading of cases, as they are posted on *lexis.com*, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals, and the appropriate federal courts, posted on *lexis.com* as of March 25, 2004. These cases will be printed in the following reports:

Pacific Reporter, 3rd Series

Federal Supplement, 2nd Series

Federal Reporter, 3rd Series

United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Additionally, annotations have been taken from the following sources:

American Law Reports, 5th Series, through Volume 113

American Law Reports, Federal Series, through Volume 189

Opinions of Attorney General, 2002-2

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.	Idaho Rules of Civil Procedure
I.R.E.	Idaho Rules of Evidence
I.C.R.	Idaho Criminal Rules
M.C.R.	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
I.A.R.	Idaho Appellate Rules

If you have any questions or suggestions concerning the Idaho Code, please write or call toll free 1-800-833-9844, fax toll free at 1-800-643-1280, or email us at customer.support@bender.com.

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USER'S GUIDE

The following guide contains comments on a few of the time-saving features to be found in the Idaho Code volumes, prepared by LexisNexis. These comments are made to increase the set's usefulness to its users.

If you have any questions or suggestions concerning the Idaho Code, please write or call toll free 1-800-833-9844. Direct written inquiries to:

LexisNexis
Attn: Customer Service
1275 Broadway
Albany, NY 12204-2694

This guide is designed to help both the lawyer and the layman get the most out of the Idaho Code. It gives brief information on how to use each of the following items most effectively:

- Advance Code Service
- Analyses
- Annotations
- Cited in
- Collateral References
- Commentary
- Comparative Legislation
- Compiler's Notes
- Constitutional Amendments
- Court Rules
- Cross References
- Decisions Under Prior Law
- Headings and Catchlines
- Historical Citations
- Indexes
- Repealed, Superseded, Transferred and Amended and Redesignated Sections
- Retention of Replaced Volumes and Supplements
- Section to Section References
- Structure of Code
- Tables

ADVANCE CODE SERVICE

The Advance Annotation Service updates the Cumulative Supplement to the Idaho Code and contains more recent annotations from cases and law reviews. It may also contain legislation enacted too late for the Cumulative Supplement or may set out corrections to legislation. It is published in three cumulative pamphlets, approximately quarterly. Its contents are included in the following year's supplement, when published.

ANALYSES

In addition to the table of contents near the beginning of each volume, each title and chapter is preceded by an analysis, which is a table of contents for that title or chapter. Use of the analysis can provide a quick understanding of the title or chapter.

ANNOTATIONS

All reported state and federal cases which arise in Idaho and construe Idaho law have been read and fully annotated under pertinent statutes. All case notes have been read and edited to assure their continuing accuracy. Where a decision has undergone subsequent review, the reviewing court's action is noted in the case citation if it affects the annotated point. Where two or more decisions apply to the same rule in essentially identical terms, their citations are cumulated under the case note stating the rule.

Case notes are divided by catchlines which reflect common themes in the notes. The publisher has endeavored to categorize the notes into small groups to assist the user in identifying the notes which will be most helpful to him. These groups are arranged alphabetically by catchline, with the exception of the notes under the heading "In General" which always appears first inasmuch as they construe the whole section or make points generally applicable to all its provisions. Where there is more than one catchline under a section, the catchlines are printed in an analysis immediately preceding the first annotation.

Where a section has been substantially amended so that a case previously carried under it no longer appears to be relevant, the words "(Decision prior to 20____ amendment)" may be inserted following the case citations for such case or if a large number of cases are affected the annotations may be setup under the catchline heading "Decisions prior to the 20____ amendment".

Where a section has been repealed and there is no new law taking its place the publisher may retain those case notes if, because of the nature of the repealed sections, such notes would be of value even though the sections have been repealed, otherwise such notes are deleted. Where a section has been repealed and new sections have been enacted which contain similar subject matter, the notes are carried under the new section or sections as "Decisions Under Prior Law". Notes under this heading are rewritten where necessary to increase the user's understanding of how the former section differed from the present law. Decisions Under Prior Law are categorized and arranged like current annotations.

The annotations have been prepared by the editorial staff of the publisher and accurately reflect the holdings of the courts. All annotations, however, are intended only as source material, and the user is urged to review the actual case itself rather than relying wholly on the annotation.

For scope of annotations in a particular bound volume, Supplement or Advance Code Service pamphlet, see Publisher's Note in the front of the particular work.

CITED IN

Decisions which refer to Idaho Code sections without construing them are listed under the "Cited in" heading. Since some decisions frequently construe related points of law, consulting "Cited in" cases can help the user see the section before him in perspective.

COLLATERAL REFERENCES

Articles appearing in standard national law encyclopedias and digests concerning subjects related to Idaho statutes are carried under the appropriate statute.

COMMENTARY

Occasionally, upon the enactment of a major piece of legislation such as a probate code, commentary concerning the code will be carried in notes following the text of the statute. This commentary is not prepared by the publisher, but is included in the Code as an additional feature for the user. Questions or comments on the Commentary should be addressed to the group or agency that prepared it.

COMPARATIVE LEGISLATION

Statutes which are derived from uniform laws carry references to statutes from the six states bordering Idaho when any of these states has adopted the same uniform law. These citations to the statutes of the other states are generally carried under the first section of the chapter to which they pertain. Occasionally, comparative legislation pertains to only one section in which case it is cited under that section rather than under the first section of the chapter.

COMPILER'S NOTES

These notes immediately follow the section to which they pertain and inform the user about special circumstances connected with the section e.g., noncodified sections affecting the interpretation or operation of an act, former laws which were compiled under the same section number or numbers but which have been repealed, emergency clauses, effective dates, references accounting for sections, notes explaining multiple amendments or any unusual situation with respect to a section which would require an explanation.

Where a section has been repealed, superseded, or transferred, compiler's notes are always inserted beneath the section catchline, with information concerning the action and referring the user to new or present provisions, if any.

CONSTITUTIONAL AMENDMENTS

A proposed constitutional amendment is set forth in a note entitled "Proposed amendment" under the section affected. When an amendment is ratified, the section affected is changed to read as amended and a Compiler's note written containing information regarding the ratification. Such information is also added to the "Table of Amendments To Constitution of Idaho" which precedes the index to the Constitution in the first volume.

COURT RULES

All of the Idaho court rules are contained in a separate softcovered volume entitled "Idaho Court Rules 20____ Edition". It is updated in the same manner and at the same time as the Idaho Code.

CROSS REFERENCES

Cross references refer the user to other statutes or rules of court that may modify or supplement the statutory provision or place it in context. They are not included for sections immediately preceding or following the sections at hand within the same chapter and do not cite all related statutes. The general index should be used to locate all of the law on the subject.

DECISIONS UNDER PRIOR LAW

(See Annotations.)

HEADINGS AND CATCHLINES

Every title, chapter, and individual Code section contains a topical word or phrase which precedes the text of that statutory unit. Such language, which indicates the subject matter of the unit, is called a heading when referring to a title or chapter, and a catchline when referring to a single section. By necessity, title and chapter headings are less specific than section catchlines since they express the overall contents of a larger division. These headings and catchlines are reviewed and amended whenever necessary to reflect the textual contents more accurately.

HISTORICAL CITATIONS

The material appearing in brackets immediately following the text of a statute is the historical citation. The historical citation of a law which has been classified by the legislature begins I.C., § , as added by 20 , ch. , § , p. ;. Where the publisher has classified a law the historical citation begins "20 , ch. , § , p. ". The citation includes all session law and official Code citations that enact or amend Code sections but does not include session laws that merely affect a Code section but do not change the section's text (e.g., an appropriation). The historical citation sets out the year of enactment and/or amendment, the chapter number of the enacting act, the section number of the chapter, and the page of the session laws wherein the act begins.

INDEXES

The general index for the Idaho Code is published in soft cover volumes which are updated and replaced annually. In addition, an index to the statutory material comprising each volume is included at the end of each volume.

The pocket supplement to each volume contains a "Ready-Reference Index" which gives a brief description of the text material contained in that supplement, along with section numbers.

For some basic principles concerning index use, consult the Foreword to the Index in the front of the first volume of the general index.

REPEALED, SUPERSEDED, AND TRANSFERRED SECTIONS

Where a section has been affected by any of these actions, its section number and catchline has been retained at its former location. A Compiler's note immediately follows explaining the action and refers the user to new or present provisions, if any.

RETENTION OF REPLACED VOLUMES AND SUPPLEMENTS

It is recommended that, as bound volumes and supplements are replaced, the user retain replaced volumes and supplements for reference purposes.

SECTION TO SECTION REFERENCES

When the text of the section refers to another codified section or chapter or to a specific portion of another law, a section to section reference is written and carried as a note under the section being referred to. Such notes are headed by a bold heading "Sec. to Sec. Reference" and are written only where the section referred to is more than one section away from the section which makes the reference.

STRUCTURE OF CODE

Generally the Idaho Code consists of Titles 1-73 which are divided into chapters, which in turn are divided into statutory sections. Some chapters are divided into subchapters. For example Chapter 2—Vital Statistics of Title 39 contains a subchapter with the centered heading designation "Vital Statistics Act".

Titles 15 and 20 are divided into chapters, then into parts and finally into sections. Chapter 1, of Title 30 is divided into parts and then into sections.

TABLES

The first volume of the Idaho Code contains tables which will help the user locate material in the Code. The table of "Compiled Statutes of 1919" shows where material contained in the Compiled Statutes of 1919 may be found in the Idaho Code; the table of "Idaho Code Annotated 1932" shows where sections contained in the I.C.A., 1932 may be found in the present Code. The remainder of the tables show the disposition of session laws from 1921 to the present into the Idaho Code.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

1921.....	March 5, 1921
1923.....	March 9, 1923
1925.....	March 5, 1925
1927.....	March 3, 1927
1929.....	March 7, 1929
1931	March 5, 1931
1931 (E.S.)	March 13, 1931
1933	March 1, 1933
1933 (E.S.)	June 22, 1933
1935	March 8, 1935
1935 (1st E.S.)	March 20, 1935
1935 (2nd E.S.)	July 10, 1935
1936 (3rd E.S.)	July 31, 1936
1937	March 6, 1937
1937 (E.S.)	November 30, 1938
1939.....	March 2, 1939
1941	March 8, 1941
1943	February 28, 1943
1944 (1st E.S.)	March 1, 1944
1944 (2nd E.S.)	March 4, 1945
1945	March 9, 1945
1946 (1st E.S.)	March 7, 1946
1946 (2nd E.S.)	March 7, 1946
1947	March 7, 1947
1949	March 4, 1949
1950 (E.S.)	February 25, 1950
1951	March 12, 1951
1952 (E.S.)	January 16, 1952
1953	March 6, 1953
1955	March 5, 1955
1957	March 16, 1957
1959	March 9, 1959
1961	March 2, 1961
1961 (1st E.S.)	August 4, 1961
1963	March 19, 1963
1964 (E.S.)	August 1, 1964
1965	March 18, 1965
1965 (1st E.S.)	March 25, 1965
1966 (2nd E.S.)	March 5, 1966
1966 (3rd E.S.)	March 17, 1966
1967	March 31, 1967
1967 (1st E.S.)	June 23, 1967
1968 (2nd E.S.)	February 9, 1968

1969	March 27, 1969
1970.....	March 7, 1970
1971.....	March 19, 1971
1971 (E.S.)	April 8, 1971
1972.....	March 25, 1972
1973.....	March 13, 1973
1974	March 30, 1974
1975	March 22, 1975
1976	March 19, 1976
1977	March 21, 1977
1978	March 18, 1978
1979	March 26, 1979
1980	March 31, 1980
1981	March 27, 1981
1981 (E.S.)	July 21, 1981
1982	March 24, 1982
1983	April 14, 1983
1983 (E.S.)	May 11, 1983
1984	March 31, 1984
1985	March 13, 1985
1986	March 28, 1986
1987	April 1, 1987
1988	March 31, 1988
1989	March 29, 1989
1990	March 30, 1990
1991	March 30, 1991
1992	April 3, 1992
1992 (E.S.)	July 28, 1992
1993	March 27, 1993
1994.....	April 1, 1994
1995.....	March 17, 1995
1996.....	March 15, 1996
1997.....	March 19, 1997
1998.....	March 19, 1999
1999	March 19, 1999
2000	April 5, 2000
2001	March 30, 2001
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004

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CONSTITUTIONS

CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE.

1. LEGISLATIVE DEPARTMENT.
2. EXECUTIVE DEPARTMENT.
3. JUDICIAL DEPARTMENT.
4. STATE AND TERRITORIAL RELATIONS.
5. MODE OF AMENDMENT.

ARTICLE.

6. ASSUMPTION OF PUBLIC DEBT — SUPREME LAW
— OATH OF OFFICE — RELIGIOUS TESTS
PROHIBITED.
7. RATIFICATION — ATTESTATION.

PREAMBLE

We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Notes. In May, 1785, a committee of congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the state legislatures to proceed in the matter. In January, 1786, the legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other states of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations might be necessary to their common interest and their permanent harmony; and to report to the several states such an act, relative to this great object, as, when ratified by them, would enable the United States in congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other states were represented, viz.: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report (drawn by Mr. Hamilton of New York) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the states by which they were respec-

tively delegated would concur, and use their endeavors to procure the concurrence of the other states, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the federal government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in congress assembled as, when agreed to by them and afterwards confirmed by the legislatures of every state, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the legislatures of those states which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven states having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed Constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to congress, with a resolution stating how the proposed federal government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the

resolution and letter concerning the same, to “be transmitted to the several legislatures in order to be submitted to a convention of delegates chosen in each state by the people thereof, in conformity to the resolves of the convention.”

On the 4th of March, 1789, the day which had been fixed for commencing the operation of government under the new Constitution, it had been ratified by the conventions chosen in each state to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788;

Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The president informed congress, on the 28th day of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed congress on the first of June, 1790, that Rhode Island had ratified the Constitution May 29, 1790. Vermont, in convention, ratified the Constitution January 10, 1791, and was, by an act of congress approved February 18, 1791, “received and admitted into this Union as a new and entire member of the United States.”

Article 1

LEGISLATIVE DEPARTMENT

SECTION.

1. [Legislative powers vested in congress.]
2. [House of representatives.]
3. [Senate.]
4. [Election of members — Sessions.]
5. [Organization — Proceedings — Adjournment.]

SECTION.

6. [Compensation — Privileges — Holding other office.]
7. [Bills and resolutions — Veto.]
8. [Powers of congress.]
9. [Powers denied congress.]
10. [Powers denied the states.]

§ 1. [Legislative powers vested in congress.] — All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

§ 2. [House of representatives.] — [1.] The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

[2.] No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

[3.] [Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons.] The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware

one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

[4.] When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

[5.] The house of representatives shall choose their speaker and other officers; and shall have the sole power of impeachment.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

The brackets in clause 3 indicate that the

enclosed portion was superseded or modified by amendment (see Amend. 14, § 2; Amend. 16).

§ 3. [Senate.] — [1.] [The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years; and each senator shall have one vote.]

[2.] Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; [and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.]

[3.] No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

[4.] The Vice-President of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

[5.] The senate shall choose their other officers, and also a president pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.

[6.] The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried the chief justice shall preside: and no person shall be convicted without the concurrence of two-thirds of the members present.

[7.] Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

The bracketed material in clauses 1 and 2

was superseded or modified by Amendment 17.

§ 4. [Election of members — Sessions.] — [1.] The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at

any time by law make or alter such regulations, except as to the places of choosing senators.

[2.] The congress shall assemble at least once in every year, and such meeting shall [be on the first Monday in December], unless they shall by law appoint a different day.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

enclosed portion has been superseded or modified by Amendment 20.

The brackets in clause 2 indicate that the

§ 5. [Organization — Proceedings — Adjournment.] — [1.] Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties as each house may provide.

[2.] Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with a concurrence of two-thirds, expel a member.

[3.] Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

[4.] Neither house, during the session of congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

§ 6. [Compensation — Privileges — Holding other office.] — [1.] The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

[2.] No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States, shall be a member of either house during his continuance in office.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

§ 7. **[Bills and resolutions — Veto.]** — [1.] All bills for raising revenue shall originate in the house of representatives; but the senate may propose or concur with amendments as on other bills.

[2.] Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the President of the United States; if he approve he shall sign it, but if not he shall return it, with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment prevent its return, in which case it shall not be a law.

[3.] Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

§ 8. **[Powers of congress.]** — [1.] The congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;

[2.] To borrow money on the credit of the United States;

[3.] To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

[4.] To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;

[5.] To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;

[6.] To provide for the punishment of counterfeiting the securities and current coin of the United States;

[7.] To establish post-offices and post roads;

[8.] To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;

[9.] To constitute tribunals inferior to the Supreme Court;

[10.] To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;

[11.] To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;

[12.] To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

[13.] To provide and maintain a navy;

[14.] To make rules for the government and regulation of the land and naval forces;

[15.] To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;

[16.] To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively, the appointment of the officers, and the authority of training the militia according to the discipline prescribed by congress;

[17.] To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings; and

[18.] To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

§ 9. [Powers denied congress.] — [1.] The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

[2.] The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

[3.] No bill of attainder or ex post facto law shall be passed.

[4.] No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

[5.] No tax or duty shall be laid on articles exported from any state.

[6.] No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

[7.] No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

[8.] No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

§ 10. [Powers denied the states.] — [1.] No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

[2.] No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to revision and control of the congress.

[3.]. No state shall, without the consent of congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

Article 2

EXECUTIVE DEPARTMENT

SECTION.

1. [The President.]
2. [Commander-in-chief — Pardons — treaties — Appointment of officers.]

SECTION.

3. [Miscellaneous powers and duties.]
4. [Impeachment.]

§ 1. [The President.] — [1.] The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice-President, chosen for the same term, be elected, as follows:

[2.] Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress: but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

[3.] [The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States,

directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the house of representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the senate shall choose from them by ballot the Vice-President.]

[4.] The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

[5.] No person except a natural born citizen, or a citizen of the United States, at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

[6.] In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

[7.] The president shall, at stated times, receive for his services, a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

[8.] Before he enter on the execution of his office, he shall take the following oath or affirmation: — “I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.”

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

The bracketed material in clause 3 was superseded or modified by Amendment 12.

§ 2. [Commander-in-chief — Pardons — Treaties — Appointment of officers.] — [1.] The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the

opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

[2.] He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate, and by and with the advice and consent of the senate, shall appoint ambassadors, and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

[3.] The President shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

§ 3. [Miscellaneous powers and duties.] — He shall from time to time give to the congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

§ 4. [Impeachment.] — The President, Vice-President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Article 3

JUDICIAL DEPARTMENT

SECTION.

1. Judicial power.

2. Extent of judicial power — Supreme

SECTION.

Court — Trial and places of trial.

3. Treason, proof and punishment.

§ 1. [Judicial power.] — The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

§ 2. [Extent of judicial power — Supreme Court — Trial and places of trial.] — [1.] The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; — to all cases affecting ambassadors, other public ministers and consuls; — to all cases of admiralty and maritime jurisdiction; — to controversies to which the United States shall be a party; — [to controversies between two or more states; — between a state and citizens of another state]; — between citizens of different states, — between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

[2.] In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

[3.] The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

The bracketed words in clause 1 have been superseded by Amendment 11.

§ 3. [Treason, proof and punishment.] — [1.] Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

[2.] The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

Article 4

STATE AND TERRITORIAL RELATIONS

SECTION.	SECTION.
1. [Full faith and credit to records and judicial proceedings of states.]	tions respecting the territory and property of the United States.]
2. [Privileges and immunities — Fugitives from justice and service.]	4. [Guaranty of republican form of government and against invasion.]
3. [Admission of states — Rules and regula-	

§ 1. [Full faith and credit to records and judicial proceedings of States.] — Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress

may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

§ 2. [Privileges and immunities — Fugitives from justice and service.] — [1.] The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

[2.] A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

[3.] No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

§ 3. [Admission of states — Rules and regulations respecting the territory and property of the United States.] — [1.] New states may be admitted by the congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states; or parts of states, without the consent of the legislatures of the states concerned as well as of the congress.

[2.] The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

§ 4. [Guaranty of republican form of government and against invasion.] — The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature can not be convened) against domestic violence.

Article 5

AMENDMENT

[Mode of amendment.] — The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided that no amendment

which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Cross ref. Conventions to pass on proposed amendments, §§ 34-2201 — 34-2216.

Article 6

MISCELLANEOUS PROVISIONS

[Assumption of public debt — Supreme Law — Oath of office — Religious tests prohibited.] — [1.] All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the confederation.

[2.] This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

[3.] The senators and representatives before mentioned, and the members of the several state legislatures, and all executives and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Compiler's notes. Bracketed clause numbers were inserted by the compiler.

Article 7

ADOPTION

[Ratification — Attestation.] — The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

Done in convention by the unanimous consent of the states present the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty seven and of the independence of the United States of America the twelfth.

In Witness Whereof we have hereunto subscribed our names,

Go Washington — Presidt.
and Deputy from Virginia.

ATTEST:

WILLIAM JACKSON,
Secretary.

New Hampshire:

JOHN LANGDON,

NICHOLAS GILMAN.

Massachusetts:

NATHANIEL GORHAM,

RUFUS KING.

Connecticut:

WM SAML JOHNSON,

ROGER SHERMAN.

New York:

ALEXANDER HAMILTON.

New Jersey:

WIL: LIVINGSTON,
DAVID BREARLEY,WM PATERSON,
JONA: DAYTON.

Pennsylvania:

B FRANKLIN,
THOMAS MIFFLIN,
ROBT MORRIS,
GEO. CLYMER,THOS FITZSIMONS,
JARED INGERSOLL,
JAMES WILSON,
GOUV MORRIS.

Delaware:

GEO: READ,
GUNNING BEDFORD JUN,
JOHN DICKINSON,RICHARD BASSETT,
JACO: BROOM.

Maryland:

JAMES MCHENRY,
DAN OF ST THOS JENIFER,

DANL CARROLL.

Virginia:

JOHN BLAIR,

JAMES MADISON JR.

North Carolina:

WM BLOUNT,
RICHD DOBBS SPAIGHT,

HU WILLIAMSON.

South Carolina:

J. RUTLEDGE,
CHARLES COTESWORTH
PICKNEY,

CHARLES PINCKNEY,
PIERCE BUTLER.

Georgia:

WILLIAM FEW,

ABR BALDWIN.

AMENDMENTS

IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA, PROPOSED BY CONGRESS, AND RATIFIED BY THE LEGISLATURES OF THE SEVERAL STATES PURSUANT TO THE FIFTH ARTICLE OF THE ORIGINAL CONSTITUTION

AMENDMENT.

1. [RELIGIOUS AND POLITICAL FREEDOM.]
2. [RIGHT TO BEAR ARMS.]
3. [QUARTERING SOLDIERS.]
4. [UNREASONABLE SEARCHES AND SEIZURES.]
5. [CRIMINAL ACTIONS — PROVISIONS CONCERNING — DUE PROCESS OF LAW AND JUST COMPENSATION CLAUSES.]
6. [RIGHTS OF THE ACCUSED.]
7. [TRIAL BY JURY IN CIVIL CASES.]
8. [BAIL — PUNISHMENT.]
9. [RIGHTS RETAINED BY PEOPLE.]
10. [RIGHTS RESERVED TO STATES OR PEOPLE.]
11. [SUITS AGAINST STATES — RESTRICTION OF JUDICIAL POWER.]
12. [ELECTION OF PRESIDENT AND VICE-PRESIDENT.]
13. SLAVERY PROHIBITED, § 1.
POWER TO ENFORCE ARTICLE, § 2.
14. CITIZENSHIP — DUE PROCESS OF LAW — EQUAL PROTECTION, § 1.
REPRESENTATIVES — POWER TO REDUCE APPORTIONMENT, § 2.
DISQUALIFICATION TO HOLD OFFICE, § 3.
PUBLIC DEBT NOT TO BE QUESTIONED — DEBTS OF THE CONFEDERACY AND CLAIMS NOT TO BE PAID, § 4.
POWER TO ENFORCE AMENDMENT, § 5.
15. RIGHT OF CITIZENS TO VOTE — RACE OR COLOR NOT TO DISQUALIFY, § 1.
POWER TO ENFORCE AMENDMENT, § 2.
16. INCOME TAX.
17. ELECTION OF SENATORS.
18. NATIONAL PROHIBITION — INTOXICATING LIQUORS, § 1. [REPEALED.]
CONCURRENT POWER TO ENFORCE AMENDMENT, § 2. [REPEALED.]
TIME LIMIT FOR ADOPTION, § 3. [REPEALED.]

AMENDMENT.

19. WOMAN SUFFRAGE, § 1.
POWER TO ENFORCE AMENDMENT, § 2.
20. EXECUTIVE AND LEGISLATIVE DEPARTMENTS — TERMS OF ELECTIVE OFFICERS, § 1.
ANNUAL MEETING OF CONGRESS — DATE, § 2.
SUCCESSION TO OFFICE OF PRESIDENT OR VICE-PRESIDENT, § 3.
DEATH OF PRESIDENT OR VICE-PRESIDENT — SELECTION OF SUCCESSOR — CHOICE DEVOLVING ON EITHER HOUSE, § 4.
EFFECTIVE DATE OF AMENDMENT, § 5.
TIME LIMIT FOR RATIFICATION, § 6.
21. REPEAL OF EIGHTEENTH AMENDMENT, § 1.
INTOXICATING LIQUORS, SHIPMENT INTO DRY TERRITORY PROHIBITED, § 2.
RATIFICATION, TIME LIMIT, § 3.
22. LIMITATION ON TERM OF PRESIDENT, § 1.
RATIFICATION, TIME LIMIT, § 2.
23. PRESIDENTIAL AND VICE PRESIDENTIAL ELECTORS FOR DISTRICT OF COLUMBIA, § 1.
ENFORCEMENT OF ARTICLE, § 2.
24. RIGHT TO VOTE NOT TO BE DENIED FOR FAILURE TO PAY POLL TAX, § 1.
POWER TO ENFORCE AMENDMENT, § 2.
25. FILLING VACANCY IN OFFICE OF PRESIDENT, § 1.
FILLING VACANCY IN OFFICE OF VICE PRESIDENT, § 2.
DECLARATION OF DISABILITY BY PRESIDENT — ACTING PRESIDENT, § 3.
DETERMINATION OF DISABILITY OF PRESIDENT, § 4.
26. RIGHTS OF CITIZENS EIGHTEEN YEARS OF AGE TO VOTE, § 1.
POWER TO ENFORCE AMENDMENT, § 2.
27. [COMPENSATION OF SENATORS AND REPRESENTATIVES.]

AMENDMENT 1

[Religious and political freedom.] — Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Notes. The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several states by the first congress, on the 25th of September, 1789. They were ratified by the following states,

and the notifications of ratification by the governors thereof were successively communicated by the President to congress: Delaware, January 28, 1790; Maryland, December 19, 1789; New Hampshire, January 25, 1790;

New Jersey, November 20, 1789; New York, March 27, 1790; North Carolina, December 22, 1789; Pennsylvania, March 10, 1790; Rhode Island, June 15, 1790; South Carolina, January 19, 1790; Vermont, November 3,

1791; and Virginia, December 15, 1791. The following of the thirteen original states did not ratify until the year 1939: Connecticut, April 19; Georgia, March 18; Massachusetts, March 2.

AMENDMENT 2

[Right to bear arms.] — A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

AMENDMENT 3

[Quartering soldiers.] — No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

AMENDMENT 4

[Unreasonable searches and seizures.] — The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENT 5

[Criminal actions — Provisions concerning — Due process of law and just compensation clauses.] — No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT 6

[Rights of the accused.] — In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

AMENDMENT 7

[Trial by jury in civil cases.] — In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury,

shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

AMENDMENT 8

[Bail — Punishment.] — Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT 9

[Rights retained by people.] — The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 10

[Rights reserved to states or people.] — The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

AMENDMENT 11

[Suits against states — Restriction of judicial power.] — The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Notes. The eleventh amendment to the Constitution of the United States was submitted to the legislatures of the several states by the third congress on the 4th of March, 1794 and was declared to have been ratified in a message from the President to congress dated the 8th of January, 1798, when twelve authenticated ratifications had been received. In fact, however, it had been adopted by the required twelve states as early as the 7th of February, 1795: Connecticut (May 8, 1794); Delaware (January 23, 1795); Georgia (November 29, 1794); Kentucky (December 7, 1794); Maryland (December 26, 1794); Massachusetts

(June 26, 1794); New Hampshire (June 16, 1794); New York (March 27, 1794); North Carolina (February 7, 1795); Rhode Island (March 31, 1794); Vermont (between (October 9 and November 9, 1794); and Virginia (November 18, 1794). South Carolina ratified on December 4, 1797, prior to the President's message.

It resulted from the decision in the case of *Chisholm v. Georgia*, 2 U.S. (Dall.) 419, 1 L. Ed. 440 (1793), in which it was held that a state was suable in the Supreme Court by individual citizens of another state.

AMENDMENT 12

[Election of President and Vice-President.] — The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat

of the government of the United States, directed to the president of the senate; — the president of the senate shall, in the presence of the senate and house of representatives, open all the certificates and the votes shall then be counted; — The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the house of representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the house of representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. — The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

Notes. The twelfth amendment to the Constitution of the United States was submitted to the legislatures of the several states by the eighth congress, on the 12th day of December, 1803, in lieu of the original third paragraph of the first section of the second article; and was declared in a proclamation of the secretary of state, dated the 25th of September, 1804, to have been ratified by the legislatures of three-

fourths of the seventeen states: Georgia, Kentucky, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, and Virginia.

This amendment resulted from the Adams-Jefferson-Burr election contest for the presidency.

AMENDMENT 13

§ 1. [Slavery prohibited.] — Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

§ 2. [Power to enforce article.] — Congress shall have power to enforce this article by appropriate legislation.

Notes. The thirteenth amendment to the Constitution of the United States was submitted to the legislatures of the several states by the thirty-eighth congress, on the 1st of February, 1865, and was declared, in a proclamation of the secretary of state, dated the 18th of December, 1865, to have been ratified by the

legislatures of twenty-seven of the thirty-six states, viz.: Alabama, Arkansas, Connecticut, Georgia, Illinois, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Ten-

nessee, Vermont, Virginia, West Virginia, and Wisconsin. Subsequent to the proclamation, it

was ratified by California, Florida, Iowa, New Jersey, Oregon, and Texas.

AMENDMENT 14

§ 1. [Citizenship — Due process of law — Equal protection.] — All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

§ 2. [Representatives — Power to reduce apportionment.] — Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

§ 3. [Disqualification to hold office.] — No person shall be a senator or representative in congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may by a vote of two-thirds of each house, remove such disability.

§ 4. [Public debt not to be questioned — Debts of the Confederacy and claims not to be paid.] — The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

§ 5. [Power to enforce amendment.] — The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Notes. The fourteenth amendment to the Constitution of the United States was submitted to the legislatures of the several states by the thirty-ninth congress, on the 16th day of June, 1866. On the 21st of July, 1868, congress adopted and transmitted to the department of state a concurrent resolution, declaring that the legislatures of the states of Alabama, Arkansas, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, West Virginia, and Wisconsin, being three-fourths and more of the several states of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each house of the thirty-ninth congress: "Therefore, Resolved, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the secretary of state." The secretary of state accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six states, viz.: Alabama, July 13, 1868; Arkansas, April 6, 1868; Connecticut, June 30, 1866; Florida, June 9, 1868; Georgia rejected it November 13, 1866, and

ratified it July 21, 1868; Illinois ratified it January 15, 1867; Indiana, January 29, 1867; Iowa, April 3, 1868; Kansas, January 18, 1867; Louisiana, July 9, 1868; Maine, January 19, 1867; Massachusetts, March 20, 1867; Michigan, February 15, 1867; Minnesota, February 1, 1867; Missouri, January 26, 1867; Nebraska, June 15, 1867; Nevada, January 22, 1867; New Hampshire, July 7, 1866; New Jersey, September 11, 1866 (and the legislature of the same state passed a resolution in April, 1868, to withdraw its consent to it); New York ratified it January 10, 1867; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; Ohio ratified it January 11, 1867 (and the legislature of the same state passed a resolution in January, 1868, to withdraw its consent to it); Oregon, September 19, 1866; Pennsylvania, February 13, 1867; Rhode Island, February 7, 1867; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; Tennessee, July 19, 1866; Vermont, November 9, 1866; West Virginia, January 16, 1867; and Wisconsin, February 13, 1867. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virginia rejected it January 19, 1867, and ratified it October 8, 1869. The amendment was rejected by Delaware February 8, 1867; by Kentucky January 10, 1867; by Maryland March 23, 1867; and was not afterward ratified by either state.

AMENDMENT 15

§ 1. [Right of citizens to vote — Race or color not to disqualify.] — The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color, or previous condition of servitude.

§ 2. [Power to enforce amendment.] — The congress shall have power to enforce this article by appropriate legislation.

Notes. The fifteenth amendment to the Constitution of the United States was submitted to the legislatures of the several states by the fortieth congress, on the 27th of February, 1869, and was declared in a proclamation of the secretary of state, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven states. The dates of these ratifications were: from Alabama, November 24, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; Georgia, February 2, 1870; Illinois, March 5, 1869; Indiana, May 13-14, 1869; Iowa, February 3, 1870; Kansas, January 18-19, 1870; Louisiana, March 5, 1869; Maine, March 12, 1869; Massachusetts, March 9-12, 1869; Michigan, March 8, 1869;

Minnesota, February 19, 1870; Mississippi, January 15-17, 1870; Missouri, January 10, 1870; Nebraska, February 17, 1870; Nevada, March 1, 1869; New Hampshire, July 7, 1869; New York, March 17-April 14, 1869 (and the legislature of the same state passed a resolution January 5, 1870, to withdraw its consent to it); North Carolina, March 5, 1869; Ohio, January 27, 1870; Pennsylvania, March 26, 1869; Rhode Island, January 18, 1870; South Carolina, March 16, 1869; Texas, February 18, 1870; Vermont, October 21, 1869; Virginia, October 8, 1869; West Virginia, March 3, 1869; Wisconsin, March 9, 1869. The state of Georgia also ratified the amendment February 2, 1870.

AMENDMENT 16

[Income tax.] — The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

Notes. The sixteenth amendment was submitted to the legislatures of the several states, by a resolution of congress passed on July 12, 1909, at the first session of the sixty-first congress, and was ratified according to a proclamation of the secretary of state dated February 25, 1913, by the legislatures of the following states: Alabama, August 17, 1909; Arizona, April 9, 1912; Arkansas, April 22, 1911; California, January 31, 1911; Colorado, February 20, 1911; Delaware, February 3, 1913; Georgia, August 3, 1910; Idaho, January 20, 1911; Illinois, March 1, 1910; Indiana, February 6, 1911; Iowa, February 27, 1911; Kansas, March 6, 1911; Kentucky, February 8, 1910; Louisiana, July 1, 1912; Maine, March 31, 1911; Maryland, April 8, 1910;

Michigan, February 23, 1911; Minnesota, June 12, 1912; Mississippi, March 11, 1910; Missouri, March 16, 1911; Montana, January 31, 1911; Nebraska, February 11, 1911; Nevada, February 8, 1911; New Jersey, February 5, 1913; New Mexico, February 5, 1913; New York, July 12, 1911; North Carolina, February 11, 1911; North Dakota, February 21, 1911; Ohio, January 19, 1911; Oklahoma, March 14, 1910; Oregon, January 23, 1911; South Carolina, February 23, 1910; South Dakota, February 3, 1912; Tennessee, April 11, 1911; Texas, August 17, 1910; Washington, January 26, 1911; West Virginia, January 31, 1913; Wisconsin, May 26, 1911; Wyoming, February 3, 1913.

AMENDMENT 17

[Election of senators.] — The senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, That the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the Constitution.

Notes. The seventeenth amendment to the Constitution of the United States was submitted to the legislatures of the several states by the sixty-second congress on the 16th day of May, 1912, and was declared, in a proclamation of the secretary of state, dated the 31st of May, 1913, to have been ratified by the legislatures of the states of Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Illi-

nois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico (March 13, 1913), New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

AMENDMENT 18

§ 1. [National prohibition — Intoxicating liquors.] — [Repealed.] — After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory

subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

§ 2. [Concurrent power to enforce amendment.] — [Repealed.] — The congress and the several states shall have concurrent power to enforce this article by appropriate legislation.

§ 3. [Time limit for adoption.] — [Repealed.] — This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the congress.

Compiler's notes. This amendment was repealed by Amendment 21.

Notes. The eighteenth amendment to the Constitution of the United States was submitted to the legislatures of the several states by the sixty-fifth congress, on the 17th of December, 1917, and was declared, in a proclamation of the secretary of state, dated the 29th of January, 1919, to have been ratified by the legislatures of the states of Alabama, Arizona, Arkansas, California, Colorado, Delaware,

Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico (January 22, 1919), New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

AMENDMENT 19

§ 1. [Woman Suffrage.] — The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

§ 2. [Power to enforce amendment.] — Congress shall have power to enforce this article by appropriate legislation.

Notes. The nineteenth amendment to the Constitution of the United States was submitted to the legislatures of the several states by the sixty-sixth congress, on the fifth of June, 1919, and was declared, in a proclamation of the secretary of state, dated the 26th of August, 1920, to have been ratified by the legislatures of the states of Arizona, Arkansas, California, Colorado, Connecticut, Idaho, Illi-

nois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico (February 21, 1920), New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

AMENDMENT 20

§ 1. [Executive and legislative departments — Terms of elective officers.] — The terms of the President and Vice-President shall end at noon on the twentieth day of January, and the terms of senators and representatives at noon on the third day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

§ 2. [Annual meeting of congress — Date.] — The congress shall assemble at least once in every year, and such meeting shall begin at noon on the third day of January, unless they shall by law appoint a different day.

§ 3. [Succession to office of President or Vice-President.] — If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice-President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice-President elect shall act as President until a President shall have qualified; and the congress may by law provide for the case wherein neither a President elect nor a Vice-President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

§ 4. [Death of President or Vice-President — Selection of successor — Choice devolving on either house.] — The congress may by law provide for the case of the death of any of the persons from whom the house of representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

§ 5. [Effective date of amendment.] — Sections one and two shall take effect on the fifteenth day of October following the ratification of this article.

§ 6. [Time limit for ratification.] — This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission.

Compiler's notes. This amendment renders art. 1, § 4, par. 2, of the original Constitution obsolete.

Notes. The twentieth amendment to the Constitution of the United States was submitted to the legislatures of the several states by the seventy-second congress, on the 3d day of March, 1932, and was declared in a proclamation of the secretary of state, dated the 6th day of February, 1933, to have been ratified by the legislatures of the states of Alabama,

Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Jersey, New Mexico (January 21, 1933), New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

AMENDMENT 21

§ 1. [Repeal of eighteenth amendment.] — The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

§ 2. [Intoxicating liquors, shipment into dry territory prohibited.] — The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

§ 3. [Ratification, time limit.] — This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the congress.

Notes. The twenty-first amendment to the Constitution of the United States was submitted to the several states by the seventy-second congress on the 20th day of February, and was declared, in a proclamation by the secretary of state, dated the 5th day of December, 1933, to have been ratified by conventions in the states of Alabama, Arizona, Arkansas, California, Colorado, Connecticut,

Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, New Mexico (November 2, 1933), New York, Ohio, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

AMENDMENT 22

§ 1. [Limitation on term of President.] — No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.

§ 2. [Ratification, time limit.] — This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several states within seven years from the date of its submission to the states by the congress.

Notes. The twenty-second amendment to the Constitution of the United States was submitted to the several states by the eightieth congress on the 24th day of March, 1947, and was certified on the 1st day of March, 1951 by the administrator of general services as having been ratified by the legislatures of the states of Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho (Jan. 30,

1951), Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Wisconsin and Wyoming.

AMENDMENT 23

§ 1. [Presidential and Vice Presidential electors for District of Columbia.] — The District constituting the seat of Government of the

United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

§ 2. [Enforcement of article.] — The Congress shall have power to enforce this article by appropriate legislation.

Notes. The twenty-third amendment to the Constitution of the United States was submitted to the several states by the eighty-sixth congress and received in the office of the Federal Register on June 17, 1960, and certified on the 3rd day of April, 1961 by the administrator of general services as having been ratified by the legislature of the states of Alaska, Arizona, California, Colorado, Con-

necticut, Delaware, Hawaii, Idaho (Jan. 31, 1961), Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin and Wyoming.

AMENDMENT 24

§ 1. [Right to vote not to be denied for failure to pay poll tax.] — The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax,

§ 2. [Power to enforce amendment.] — The Congress shall have power to enforce this article by appropriate legislation.

Notes. The twenty-fourth amendment to the Constitution of the United States was submitted to the several states by the eighty-seventh congress and received in the office of the Federal Register on August 29, 1962, and certified on the 4th day of February, 1964 by the administrator of general services as having been ratified by the legislatures of the states of Alaska, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho

(March 8, 1963), Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia and Wisconsin.

AMENDMENT 25

§ 1. [Filling vacancy in office of President.] — In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

§ 2. [Filling vacancy in office of Vice President.] — Whenever there is a vacancy in the office of the Vice President, the President shall

nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

§ 3. [Declaration of disability by President — Acting President.] — Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

§ 4. [Determination of disability of President.] — Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

Notes. The twenty-fifth amendment to the Constitution of the United States was submitted to the several states by the eighty-ninth congress and received in the office of the Federal Register on July 7, 1965, and certified by the administrator of general services as having been ratified by the legislatures of the states of Alaska, Arizona, Arkansas, California, Colorado, Delaware, Hawaii, Idaho

(March 2, 1966), Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

AMENDMENT 26

§ 1. [Rights of citizens eighteen years of age to vote.] — The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

§ 2. [Power to enforce amendment.] — The Congress shall have power to enforce this article by appropriate legislation.

Notes. The twenty-sixth amendment to the Constitution of the United States was submitted to the several states by the ninety-second congress and certified by the administrator of general services on July 5, 1971 as having been ratified by the legislatures of the states of Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Ha-

waii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, West Virginia and Wisconsin.

AMENDMENT 27

[Compensation of Senators and Representatives.] — No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

Compiler's notes. The twenty-seventh amendment to the Constitution of the United States was proposed by resolution passed by the first Congress of the United States and certified by the Archivist of the United States on May 18, 1992 as having been ratified by the legislatures of Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland,

Michigan, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin and Wyoming.

The bracketed heading "Compensation of Senators and Representatives" was inserted by the compiler.

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- XXI. SCHEDULE AND ORDINANCE.

PREAMBLE

We, the people of the state of Idaho, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare do establish this Constitution.

GENERAL NOTES TO THE WHOLE CONSTITUTION

Compiler's notes. The text of the Constitution herein follows the enrolled copy on file in the office of the Secretary of State.

ANALYSIS

Construction of constitution.
Effective date.

Construction of Constitution.

Unlike the federal constitution, the state constitution is a limitation, not a grant of power; if an act of the legislature is not forbidden by the state or federal constitu-

tions, it must be held valid. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

Effective Date.

The Constitution of Idaho was adopted August 6, 1889, ratified by the people November 1889 and approved by Congress July 3, 1890, (Act of July 3, 1890, ch. 656, 26 Stat. 215) but the provisions of the constitution which were not self-operating did not go into effect until legislative enactments put such provisions in motion. *Boise City Irrigation & Land Co. v. Turner*, 176 F. 373 (C.C.D. Idaho 1905).

Article I

DECLARATION OF RIGHTS

SECTION.

1. Inalienable rights of man.
2. Political power inherent in the people.
3. State inseparable part of Union.
4. Guaranty of religious liberty.
5. Right of habeas corpus.
6. Right to bail — Cruel and unusual punishments prohibited.
7. Right to trial by jury.

SECTION.

8. Prosecutions only by indictment or information.
9. Freedom of speech.
10. Right of assembly.
11. Right to keep and bear arms.
12. Military subordinate to civil power.
13. Guaranties in criminal actions and due process of law.

SECTION.

14. Right of eminent domain.
15. Imprisonment for debt prohibited.
16. Bills of attainder, etc., prohibited.
17. Unreasonable searches and seizures prohibited.
18. Justice to be freely and speedily administered.

SECTION.

19. Right of suffrage guaranteed.
20. No property qualification required of electors — Exceptions.
21. Reserved rights not impaired.
22. Rights of crime victims.

§ 1. Inalienable rights of man. — All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety.

Comp. provisions: Cal. Art. 1, § 1.

Mont. Art. 2, § 3.

Utah. Art. 1, § 1.

Cited in: McDonald v. Doust, 11 Idaho 14, 81 P. 60, 69 L.R.A. 220 (1905); State Water Conservation Bd. v. Enking, 56 Idaho 722, 58 P.2d 779 (1936); State v. Kouni, 58 Idaho 493, 76 P.2d 917 (1938); Fisher v. Masters, 59 Idaho 366, 83 P.2d 212 (1938); R.E.W. Constr. Co. v. District Court, 88 Idaho 426, 400 P.2d 390 (1965); Adams v. Pocatello, 91 Idaho 99, 416 P.2d 46 (1966); State v. Russell, 103 Idaho 699, 652 P.2d 203 (1982); State v. Chilton, 112 Idaho 823, 736 P.2d 1277 (1987).

ANALYSIS

Acquiring and possessing property.
Administration of estates.
Appeal of trial court decision.
Bond from transportation companies.
Classification of motor trucks.
Classification scheme.
Commitment to institution.
Construction.
Farm marketing statute.
Fixing unreasonable rates.
Forest fires.
Killing deer out of hunting season.
License to practice profession.
Life insurance loans.
Motor vehicle regulation.
Notice and opportunity to be heard.
Occupation — vested right to follow.
Old-age assistance.
Personal appearance.
Prearranged funeral plans.
Right to strike.
Sale of intoxicating liquor.
Savings and loan associations.
Sheep and cattle ranges.
Sterilization statute.
Sunday closing.
Term limits.
Title for initiated measures.
Transportation of intoxicating liquors.
Worker's compensation death benefits.

Acquiring and Possessing Property.

It seems that the farm produce broker's license law would violate the right to acquire,

possess and protect property were it held to apply to a cash purchaser of farm products. Hall v. Johnson, 53 Idaho 667, 27 P.2d 674 (1933).

Administration of Estates.

The mandatory provisions of the Idaho Probate Code (I. C. 15-314 repealed) giving men preference over women when persons of the same class of entitlement apply for appointment as administrator of decedent's estate is a denial of equal protection under the Fourteenth Amendment to the U.S. Constitution and affords different treatment to persons placed by the statute in different classes on the basis of criteria wholly unrelated to the objective of the statute. Reed v. Reed, 404 U.S. 71, 92 S. Ct. 251, 30 L. Ed. 2d 225 (1971), which held that such preference of males to females was neither an illogical nor arbitrary method to resolve an issue that would otherwise require a hearing and therefore was not violative of this section.

Appeal of Trial Court Decision.

Contention that annexation statute violated equal protection clause of federal constitution, together with certain provisions of the state constitution was not raised by the pleadings, nor argued or decided in the trial court, and could not be raised for the first time on appeal. Oregon S.L.R.R. v. City of Chubbuck, 93 Idaho 815, 474 P.2d 244 (1970).

Bond from Transportation Companies.

Wisdom of requiring bond from those who would engage in auto transportation is matter within discretion of legislature and, unless unreasonable in amount or confiscatory of business, amount is likewise discretionary. Smallwood v. Jeter, 42 Idaho 169, 244 P. 149 (1926).

Classification of Motor Trucks.

Classification of motor trucks operated for hire as commercial, and requiring the payment of fees in excess of that exacted of other similar trucks, does not violate this section. Curtis v. Pfost, 53 Idaho 1, 21 P.2d 73 (1933).

Classification Scheme.

Court rejected an employee's claim that Idaho Code § 72-223 of the Idaho Workers Compensation Act violated the Equal Protection Clause because the employee made no attempt to clearly identify to the court the classification challenged, and instead the employee appeared to challenge the rationality of the entire statutory scheme, which was not appropriately considered an equal protection challenge. *Robison v. Bateman-Hall, Inc.*, — Idaho —, 76 P.3d 951 (2003).

Commitment to Institution.

An accused who successfully asserted the defense of mental disease or defect and was automatically committed to mental institution was not denied his right to a hearing and judicial determination on the question of his mental condition in that those rights were accorded him at the time his defense of mental disease or defect was tendered and accepted. The fact that two separate statutes governed the recognition of those rights, i.e., former statute requiring automatic commitment of defendant acquitted on ground of mental disease or defect and § 66-329 governing involuntary civil commitments did not deny equal protection, but rather simply reflected differing factual settings under which those rights were equally recognized. *Penny v. State, Dep't of Health & Welfare*, 103 Idaho 689, 652 P.2d 193 (1982).

Under former statute requiring automatic commitment of defendant acquitted on ground of mental disease or defect, and accused who asserted the defense of mental disease or defect, and was acquitted on that basis, could be automatically committed to a mental institution without further hearing and such automatic commitment did not violate the acquittee's rights to due process or equal protection because his dangerous mental condition was established by his own admission. The committed acquittee thereafter bore the burden of establishing his right to release by showing, pursuant to authorized procedures, that he was no longer dangerously insane. *Penny v. State, Dep't of Health & Welfare*, 103 Idaho 689, 652 P.2d 193 (1982).

Since the differences between the release procedures under §§ 66-327, 66-337 and 66-343, regarding persons involuntarily committed under § 66-329, and the procedures under former statute requiring automatic commitment of defendants acquitted on ground of mental disease or defect, were minor, and since the state is reasonably entitled to take greater precaution in releasing persons judicially determined to have already endangered to the public safety than may be appropriate for persons committed under § 66-329, defendants committed under the automatic com-

mitment statute were not denied equal protection of the law. *Penny v. State, Dep't of Health & Welfare*, 103 Idaho 689, 652 P.2d 193 (1982).

Construction.

Section 18-2109 was enacted to prevent malicious injury and cruelty to animals, and is not so indefinite as to render it unconstitutional for the reason that it is susceptible of different constructions. *State v. Groseclose*, 67 Idaho 71, 171 P.2d 863 (1946).

Art. 1, § 1, Idaho Constitution is as omnipotent as art. 15, § 3. *Payette Lakes Protective Ass'n v. Lake Reservoir Co.*, 68 Idaho 111, 189 P.2d 1009 (1948).

Farm Marketing Statute.

Section 22-702, granting to the department of agriculture authority to put the farm marketing statute in operation by fixing necessary grades and standards, does not delegate legislative authority. *Marshall v. Department of Agric.*, 44 Idaho 440, 258 P. 171 (1927).

Fixing Unreasonable Rates.

A state has no right to require railroad companies to haul logs at a loss or without such compensation that is reasonable in view of the service demanded of them. *Chicago, M. & St. P. Ry. v. Public Utils. Comm'n*, 274 U.S. 344, 47 S. Ct. 604, 71 L. Ed. 1085 (1927).

Forest Fires.

The forestry law (§ 38-101 et seq.) providing against the setting of certain fires during summer season without permission from state forester or fire-warden did not deprive the property owner of his property without due process. *Chambers v. McCollum*, 47 Idaho 74, 272 P. 707 (1928).

Killing Deer Out of Hunting Season.

The § 36-1101 prohibition against killing deer out of hunting season is a reasonable limitation on a property owner's right to protect her property and does not violate this section. *State v. Thompson*, 136 Idaho 322, 33 P.3d 213 (Ct. App. 2001).

License to Practice Profession.

License conferred by the state upon an individual to practice his profession, trade or occupation is valuable personal right which can not be denied or abridged in any manner except after due notice and impartial hearing. *Abrams v. Jones*, 35 Idaho 532, 207 P. 724 (1922).

Life Insurance Loans.

Law which prescribes limitations on loans on life insurance policies, including a limit on the rate of interest which may be charged, does not contravene this section. *Continental Life Ins. & Inv. Co. v. Hattabaugh*, 21 Idaho 285, 121 P. 81 (1912).

Motor Vehicle Regulation.

Since the registration of automobiles is an appropriate and reasonable regulation on the right to use and possess them, and it is a law necessary for the ordered conduct of modern society, the defendant was subject to the law, even though she had not entered into an "agreement in equity" relinquishing her natural rights. *Parsons v. State*, 113 Idaho 421, 745 P.2d 300 (Ct. App. 1987), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

Notice and Opportunity to be Heard.

The requirements of S. L. 1957, ch. 181, § 45-1502 et seq., as to notice and opportunity to be heard, are sufficient to meet the constitutional requirements of due process. *Roos v. Belcher*, 79 Idaho 473, 321 P.2d 210 (1958).

Occupation — Vested Right to Follow.

The 1953 amendment of § 54-901 was declared unconstitutional as violative of this section and § 13 of this article of the Constitution insofar as it effected a doing away with vested rights of dental mechanics or technicians by prohibiting the following of a chosen occupation recognized as an independent calling. *Berry v. Summers*, 76 Idaho 446, 283 P.2d 1093 (1955).

A person has the constitutional right to follow a recognized and useful occupation. *Berry v. Summers*, 76 Idaho 446, 283 P.2d 1093 (1954).

The legislature may regulate occupations connected with the public health, but cannot prohibit same unless they are inherently injurious to public health or have a tendency in that direction. *Berry v. Summers*, 76 Idaho 446, 283 P.2d 1093 (1955).

While it is true that the concept of pursuit of happiness has been intertwined with a person's right to follow his chosen occupation, this concept does not stretch as far as to prohibit the otherwise proper termination of a public employee. *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).

Old-Age Assistance.

Requirement that applicants for old-age assistance enter into an agreement for assignment of real estate of applicants as security for advancements by state does not deprive applicants of property without due process of law, as the state in the interest of the common welfare may restrict or limit the right to hold property, and since furnishing by the state of old-age assistance is in the interest of the common welfare the state can impose reasonable restrictions on property in granting old-age assistance. *Newland v. Child*, 73 Idaho 530, 254 P.2d 1066 (1953).

Personal Appearance.

The right to wear one's hair in a manner of his choice is a protected right of personal taste

not to be interfered with by the state unless the state can meet the burden of showing a substantial health, safety, academic or disciplinary problem created by the wearing of long hair. *Murphy v. Pocatello School Dist.* No. 25, 94 Idaho 32, 480 P.2d 878 (1971).

Prearranged Funeral Plans.

Former section which regulated prearranged funeral plans was proper exercise of police power of state and did not place arbitrary, capricious or unreasonable restrictions on appellant's business. *Messerli v. Monarch Memory Gardens, Inc.*, 88 Idaho 88, 397 P.2d 34 (1964).

Right to Strike.

Public employees, such as school teachers, have no constitutionally guaranteed right to strike. *School Dist. No. 351 Oneida County v. Oneida Educ. Ass'n*, 98 Idaho 486, 567 P.2d 830 (1977).

Sale of Intoxicating Liquor.

A former statute prohibiting the sale of intoxicating liquor to Indians did not violate this section of the Constitution. *State v. Rorvick*, 76 Idaho 58, 277 P.2d 566 (1954).

Savings and Loan Associations.

Provisions of statute requiring savings and loan associations to insure their accounts with the Federal Savings and Loan Insurance Corporation as a condition precedent to doing business but exempting corporations which had been in continuous operation for a period of more than fifteen years from such requirement was unconstitutional. *Idaho Sav. & Loan Ass'n v. Roden*, 82 Idaho 128, 350 P.2d 225 (1960).

Sheep and Cattle Ranges.

Legislative prohibition against herding sheep upon range previously occupied by cattle does not deprive sheepman of right of acquiring, possessing, and protecting property. *State v. Horn*, 27 Idaho 782, 152 P. 275 (1915); *State v. Omaechevvaria*, 27 Idaho 797, 152 P. 280 (1915), aff'd, 246 U.S. 343, 38 S. Ct. 323, 62 L. Ed. 763 (1918).

Sterilization Statute.

Sterilization law is not unconstitutional as contravening constitutional guaranties of life, liberty, and pursuit of happiness and safety, but is a reasonable act protective of general welfare within state's police power. *State v. Troutman*, 50 Idaho 673, 299 P. 668 (1931).

Sunday Closing.

Act prohibiting keeping open on Sunday of certain places for business purposes does not violate this section. *State v. Dolan*, 13 Idaho 693, 92 P. 995, 14 L.R.A. (n.s.) 1259 (1907); *In re Jacobs*, 13 Idaho 720, 92 P. 1003 (1907).

Term limits.

Term limit statutes (§§ 34-907(e)(f), 33-443, and 50-478) were not unconstitutional because they were rationally related to legitimate goal of giving more individuals an opportunity to hold government offices than would be possible without the benefit of the ballot access restrictions. *Rudeen v. Cenarrusa*, 136 Idaho 560, 38 P.3d 598 (2001).

Title for Initiated Measures.

Legislature was authorized to delegate to attorney-general the task of selecting short title for initiated measures. In re Idaho State Fed'n of Labor, 75 Idaho 367, 272 P.2d 707 (1954).

Transportation of Intoxicating Liquors.

A statute making the transportation of intoxicating liquors into prohibition districts a misdemeanor does not unconstitutionally prohibit the use and enjoyment of one's own property, in contravention of this section. *State v. Cummins*, 30 Idaho 411, 165 P. 216 (1917).

Worker's Compensation Death Benefits.

Because the intent of the worker's compensations statutes is to provide for loss of monetary support, it is both rational and reasonable for the legislature to limit benefits to those individuals who were truly dependent on the deceased worker. Therefore, by leaving independent adult children of deceased workers benefitless, § 72-413 did not violate the equal protection clauses of the state and federal constitutions. *Meisner v. Potlatch Corp.*, 131 Idaho 258, 954 P.2d 676 (1998), cert.

denied, 525 U.S. 818, 119 S. Ct. 56, 142 L. Ed. 2d 44 (1998).

Opinions of Attorney General. It is constitutional under the First and Fourteenth Amendments of the United States Constitution, Const., article I, §§ 9 and 13, and this section to restrict the use of the word "accountant" and other labels or titles to individuals who have been certified and licensed by the state Board of Accountancy, as required by § 54-201 et seq. OAG 86-1.

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 127, 397; Vol. II, pp. 1637-1644.

Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 128; Vol. II, p. 1589.

16 Am. Jur. 2d Constitutional Law, §§ 1, 2, 18.

16A Am. Jur. 2d Constitutional Law, §§ 439-446.

16A C.J.S., Constitutional Law, §§ 2, 3, 444-448, 450, 451.

Mail, opening, search, and seizure of. 61 A.L.R.2d 1282.

Implied cause of action for damages for violation of provisions of state constitutions. 75 A.L.R.5th 619.

What constitutes reverse or majority race or national origin discrimination violative of federal constitution or statutes — Public employment cases. 168 A.L.R. Fed. 1.

Equal protection and due process clause challenges based on racial discrimination — Supreme Court cases. 172 A.L.R. Fed. 1.

§ 2. Political power inherent in the people. — All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same whenever they may deem it necessary; and no special privileges or immunities shall ever be granted that may not be altered, revoked, or repealed by the legislature.

Comp. provisions: Cal. Art. 2, § 1.

Mont. Art. 2, §§ 1, 2.

Utah. Art. 1, § 2.

Cited in: In re Prout, 12 Idaho 494, 86 P. 275, 5 L.R.A. (n.s.) 1064, 10 Ann. Cas. 199 (1906); *State v. Lockhart*, 18 Idaho 730, 111 P. 853 (1910); *American Indep. Party in Idaho, Inc. v. Cenarrusa*, 92 Idaho 356, 442 P.2d 766 (1968); *Smith v. Cenarrusa*, 93 Idaho 818, 475 P.2d 11 (1970); *Northcutt v. Sun Valley Co.*, 117 Idaho 351, 787 P.2d 1159 (1990); *De Witt v. Medley*, 117 Idaho 744, 791 P.2d 1323 (Ct. App. 1990); *Collins v. Schweitzer, Inc.*, 774 F. Supp. 1253 (D. Idaho 1991).

ANALYSIS

Appeal of trial court decision.

Charging selection.

Classification of motor trucks.

County government.

Equal rights and equal protection.

— Workers' compensation.

Fundamental rights.

Industrial commission regulations.

Lease of public property.

Means focus test.

Medical malpractice.

Motor vehicle regulation.

Parole.

Prearranged funeral plans.

Products liability.

Prosecutorial discretion.

Public assistance for children.

Public Utilities Commission Orders.

Rational basis test.
Reapportionment.
Residency requirement.
Sale of intoxicating liquor.
Schedule of rates.
Selective enforcement.
Self government.
Standard of medical care.
Suspension of driving privileges.
Taxation.
Tort Claims Act.
Trafficking in controlled substance.
Unreasonable and arbitrary classification.
Weight regulations of vehicles.
Worker's compensation death benefits.

Appeal of Trial Court Decision.

Contention that annexation statute violated equal protection clause of federal constitution, together with certain provisions of the state constitution was not raised by the pleadings, nor argued or decided in the trial court, and could not be raised for the first time on appeal. *Oregon S.L.R.R. v. City of Chubbuck*, 93 Idaho 815, 474 P.2d 244 (1970).

Charging Selection.

To show discriminatory intent by the prosecutor in respect to the charging selection, a defendant must show a deliberate and intentional plan of discrimination against him or her, based on some unjustifiable or arbitrary classification. *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987).

Classification of Motor Trucks.

Classification of motor trucks operated for hire as commercial, and requiring the payment of fees in excess of that exacted of other similar trucks, does not violate this section. *Curtis v. Pfost*, 53 Idaho 1, 21 P.2d 73 (1933).

County Government.

County government is neither special privilege nor special immunity within the meaning of this section, but is a fundamental governmental right recognized and adopted by the constitution, which can not be abrogated or alienated by legislative act. *McDonald v. Doust*, 11 Idaho 14, 81 P. 60, 69 L.R.A. 220 (1905).

Equal Rights and Equal Protection.

The statute taxing electricity produced for sale and exempting that used for irrigation inserted for the benefit of those using it is consistent with the equal protection clause because, in this arid region, the irrigation of even private lands is a matter of public concern. *Utah Power & Light Co. v. Pfost*, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

The declaration of rights contained in this article guarantees equal rights, privileges and immunities to all persons within the bounds of the state though the Constitution containing it was adopted by a limited num-

ber of male citizens of the territory in 1889. *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938).

Requirement that applicants for old-age assistance grant a lien to state on real estate of applicants whereas there is no such requirement as to applicants owning only personal property does not deny equal protection of the law, since old-age assistance is granted with due regard "to the income and resources available to him from whatever source." *Newland v. Child*, 73 Idaho 530, 254 P.2d 1066 (1953).

Provision of statute requiring savings and loan associations to insure their accounts with the Federal Savings and Loan Insurance Corporation as a condition precedent to doing business but exempting corporations which had been in continuous operation for a period of more than fifteen years from such requirement was unconstitutional. *Idaho Sav. & Loan Ass'n v. Roden*, 82 Idaho 128, 350 P.2d 225 (1960).

Without fully defining the meaning of the equal protection clause, it should be pointed out that equal protection is subject to all limitations inherent in the Constitution itself and valid enactments of the legislature. *Caesar v. Williams*, 84 Idaho 254, 371 P.2d 241 (1962).

Subsection d of § 23-910 is unconstitutional in that it denies equal protection of the laws in violation of the U. S. Constitution and Idaho's Constitution, art. 1, § 2 in that the classification attempted to be set up by such constitutional provision is arbitrary, unreasonable and discriminatory, it attempting discrimination against one who happened to hold a retail liquor license at the time of his conviction of a felony as against one who did not hold such a license at the time of his felony conviction, the court holding that no reasonable ground or basis for such a distinction between them as prospective licensees exists. *Weller v. Hopper*, 85 Idaho 386, 379 P.2d 792 (1963).

Section 33-404, which prescribes the qualifications of school electors, is not invalid and unconstitutional under Idaho Const., art. 1, §§ 2, 3 and 20, in that in an election on a school bond issue, the franchise was limited to voters in the district who were real property taxpayers (or spouse of taxpayer) on real property located in the district. *Muench v. Paine*, 93 Idaho 473, 463 P.2d 939 (1970). See, however, 94 Idaho 12, 480 P.2d 196 (1971), holding that future general obligation bond elections limited to property owners are unconstitutional.

The classification in the recovery limitation statute, entitling those suing the tortfeasor to recover full damages awarded by the trier of fact and limiting the damages to \$10,000 for those suing the tortfeasor's representative,

was not in conflict with equal protection clause. *Stucki v. Loveland*, 94 Idaho 621, 495 P.2d 571 (1972) (decision prior to 1971 amendment of § 5-327.).

A provision added to the former truck weight limit law which allowed trucks hauling unprocessed agricultural products to have a greater weight than those hauling processed agricultural products was unconstitutional. *Sterling H. Nelson & Sons v. Bender*, 95 Idaho 813, 520 P.2d 860 (1974).

The state's system of public school financing, in which per pupil expenditures varied among the school districts as a result of variations in the districts' assessed valuations for purposes of an ad valorem property tax, did not deny equal protection of the law to, nor discriminate against, students in less affluent school districts with low expenditures. *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

Where a convicted person was sentenced to concurrent terms not to exceed ten years on a manslaughter charge and for a period not to exceed ten years on an assault charge, the prisoner was not denied equal protection of the law by the classification of crimes established in the parole statute (§ 20-223), in view of the legislative authority to classify crimes as to the gravity of the acts and to provide longer terms of imprisonment for the more serious crimes. *Standlee v. State*, 96 Idaho 849, 538 P.2d 778 (1975).

Former § 32-706, which allowed awards of alimony to wives only, clearly violated the equal protection clauses of both the Idaho Constitution and the United States Constitution. However, since it was apparent that the legislature would have intended that the benefits of the alimony statute be extended to the excluded class, husbands, rather than taken from the benefitted class, wives, the Supreme Court would give effect to that legislative intent by neutrally extending the benefits of alimony to needy husbands rather than voiding former § 32-706 in its entirety. *Murphey v. Murphey*, 103 Idaho 720, 653 P.2d 441 (1982).

In § 18-6101, the State is attempting to protect women from sexual intercourse at an age when the physical, emotional and psychological consequences of sexual activity are particularly severe; because males alone can physiologically cause the result which the law properly seeks to avoid, a law punishing a male for sexual intercourse with a teenager under the age of 18 could certainly help deter this conduct. Therefore, § 18-6101(1) is not unconstitutional as violative of the equal protection clauses of the Idaho State Constitution and the United States Constitution. *State v. LaMere*, 103 Idaho 839, 655 P.2d 46 (1982).

The "rational basis" test embraces an in-

quiry into the relationship between a statutory classification and its ascribed purpose; such a relationship must be "fair and substantial." *Packard v. Joint Sch. Dist. No. 171*, 104 Idaho 604, 661 P.2d 770 (Ct. App. 1983).

In constitutional equal protection analysis, the "rational basis" test and the "means focus" test are not conceptually separate; rather, the "rational basis" test has always embraced a "means focus" element. The "rational basis" test requires not only that a statutory classification reflect a reasonably conceivable, legitimate public purpose, but also that it relate reasonably to the ascribed purpose. *Packard v. Joint Sch. Dist. No. 171*, 104 Idaho 604, 661 P.2d 770 (Ct. App. 1983).

To comply with the equal protection provisions of Const., Art. 1, §§ 2 and 13, there must be some reasonable ground or basis for the distinction between classes of persons imposed by a particular statutory scheme. *Everett v. Trunnell*, 105 Idaho 787, 673 P.2d 387 (1983).

Because the right to recover for wrongful death is not a fundamental right, a classification scheme imposed under a wrongful death statute must merely be shown to bear some rational relationship to a permissible state objective in order to meet equal protection requirements. *Everett v. Trunnell*, 105 Idaho 787, 673 P.2d 387 (1983).

The state objective under the wrongful death statute was to change the common law to allow recovery for wrongful death, while at the same time limiting that recovery to those persons most likely to suffer a loss such as a surviving wife and child; this limitation on the statutory cause of action is reasonable and bears a rational relationship to a legitimate state objective. Accordingly, parents who were denied right to sue for wrongful death of son were not denied equal protection of the laws. *Everett v. Trunnell*, 105 Idaho 787, 673 P.2d 387 (1983).

The rational basis test is the appropriate standard of review of classifications made for tax purposes. In establishing the surety bond alternative under § 63-3049(b), the Legislature enacted a statute rationally related to the governmental objective of ensuring the efficient collection of taxes. *Tarbox v. Tax Comm'n*, 107 Idaho 957, 695 P.2d 342 (1984).

The Legislature's imposition of a 60-day time requirement in § 72-439 before providing compensation for diseases which take a considerable period of time to develop bears a reasonable relation to the goal of fairness to the employer and also lessens the burden on the compensation system; thus, § 72-439 does not violate either the equal protection clause or the due process clause of either the United States or Idaho Constitutions. *Bint v. Creative Forest Prods.*, 108 Idaho 116, 697 P.2d 818, appeal dismissed, 474 U.S. 803, 106

S. Ct. 35, 88 L. Ed. 2d 28 (1985).

A discharged county employee, who argued he had been injured by § 67-2345 permitting closed meetings of the board of county commissioners for personnel matters, failed to show that his right to equal protection had been infringed, where the alleged injury to his reputation stemmed not from the closed meetings, the findings of fact, or even the termination itself but from supposed rumors and gossip aired outside any closed meeting. *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).

Homeowners are not a suspect class, and the exemption under § 63-105DD for homeowners furthers legitimate state interests, such as fostering home ownership and equalizing the tax burden between residential and business properties; therefore, § 63-105DD does not violate the equal protection provisions of this section and the United States Constitution Amendment IV. *Simmons v. Idaho State Tax Comm'n*, 111 Idaho 343, 723 P.2d 887 (1986).

The equal protections clauses of the state and federal constitutions embrace the principle that all persons in like circumstances should receive the same benefits and burdens of the law. *State v. Breed*, 111 Idaho 497, 725 P.2d 202 (Ct. App. 1986).

The first step in an equal protection analysis is to identify the classification under attack, the second is to articulate the standard under which the classification will be tested, and the third is to determine whether the standard has been satisfied. *State v. Breed*, 111 Idaho 497, 725 P.2d 202 (Ct. App. 1986).

The most rigorous equal protection standard, "strict scrutiny," is limited to schemes creating "suspect" classes based on race, national origin or alienage, or infringing upon a "fundamental" right such as voting, procreation, or constitutional safeguards for persons accused of crimes. *State v. Breed*, 111 Idaho 497, 725 P.2d 202 (Ct. App. 1986).

The least rigorous equal protections standard is the "rational basis" test, and this standard, customarily applied to social and economic legislation, requires only that a statutory scheme classify persons in a manner rationally related to a legitimate governmental objective. *State v. Breed*, 111 Idaho 497, 725 P.2d 202 (Ct. App. 1986).

The wide gap between the strict scrutiny test and the rational basis test has encouraged the development of various intermediate equal protection tests which require a classification not merely to bear a rational relationship to a conceivable government objective, but to bear a substantial relationship to a specifically identifiable legislative end; intermediate equal protection tests are applicable to cases where especially important (though not "fundamental") interests are at stake,

where unusually sensitive (though not "suspect") classes have been created, or where a statutory scheme "otherwise blatantly discriminates." *State v. Breed*, 111 Idaho 497, 725 P.2d 202 (Ct. App. 1986).

A prosecutor may proceed by either indictment or information without violating the equal protection clause of this section. *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987).

There are three standards of review to be employed in an equal protection analysis: (1) where the classification is based on a suspect classification or involves a fundamental right, the "strict scrutiny" test is employed; (2) where the discriminatory character of a challenged statutory classification is apparent on its face and where there is also a patent indication of a lack of relationship between the classification and the declared purpose of the statute, the "means-focus" test is applicable; and, (3) in other cases the "rational basis" test is employed. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

Under the "rational basis" test, equal protection is offended only if classifications are based solely on reasons totally unrelated to the pursuit of the state's goals and only if no grounds can be advanced to justify those goals. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

Classifications under the rational basis test do not violate the equal protection clause because they result in some inequality; mathematical precision is not required in scrutinizing the constitutionality of a statute. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

The principle underlying the equal protection clauses of both the Idaho and United States Constitution is that all persons in like circumstances should receive the same benefits and burdens of the law. *Bon Appetit Gourmet Foods, Inc. v. State, Dep't of Emp.*, 117 Idaho 1002, 793 P.2d 675 (1989).

In the application of the rational basis test, a two-step analysis is utilized in reviewing a classification made for tax purposes; that analysis requires first a determination of whether the statute reflects any reasonably conceivable public purpose, and secondly, it is a determination of whether the classification is reasonably related to that purpose. *Bon Appetit Gourmet Foods, Inc. v. State, Dep't of Emp.*, 117 Idaho 1002, 793 P.2d 675 (1989).

A prosecutor may proceed by either indictment or information without violating the equal protection clause of this section. *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987).

Drawing a line between criminal defendants awaiting their first trials and those awaiting retrial following successful appeals bears a rational relationship to legitimate

government objectives and does not offend equal protection principles of the Idaho Constitution. *State v. Avelar*, 129 Idaho 700, 931 P.2d 1218 (1997).

Because I.C.R. 57(b) allows the district court to permit discovery when appropriate, it is rationally related to the interest of preventing unnecessary discovery in the post-conviction arena, does not deny an appellant discovery in toto, and is not violative of the equal protection clause of the state constitution. *Aeschliman v. State*, 132 Idaho 397, 973 P.2d 749 (Ct. App. 1999).

The mandatory language of § 19-2604(3), which prohibits the reduction of a conviction for lewd conduct with a minor child from a felony to a misdemeanor, did not violate defendant's equal protection rights because the statute's classification is rationally related to its declared purpose of deterring sexual offenses against children, and this rational relationship is not diminished by the fact that it does not cover every conceivable statute under which a person could be convicted of such acts. *State v. Mowrey*, 134 Idaho 751, 9 P.3d 1217 (2000).

Defendant was not denied equal protection of the laws because the provisions of § 18-918(3) and (5) do not define identical conduct which entails different penalties. Conduct causing a traumatic injury differentiates a felony domestic battery from a misdemeanor domestic battery. *State v. Larsen*, 135 Idaho 754, 24 P.3d 702 (2001).

—Workers' Compensation.

Idaho's workers' compensation exemption for agricultural pursuits is valid under the equal protection clauses of both the Idaho and United States Constitutions. *Becerril v. Call*, 127 Idaho 365, 900 P.2d 1376 (1995).

Although § 72-102(21) and § 72-437 require that to be entitled to worker's compensation benefits for an occupational disease a claimant must be totally disabled, but to qualify for benefits for an injury caused by an accident under § 72-102(17)(b) a claimant need not be totally disabled, a claimant is not denied equal protection because of the differing consequences of disablement in these statutes, as the statutes bear a rational relationship to the legitimate legislative purpose to foster sure and certain relief for injured workers and their families, and are thus constitutional. *Tupper v. State Farm Ins.*, 131 Idaho 724, 963 P.2d 1161 (1998).

Because the amount of an employee's financial loss is dependent upon the employee's wages prior to his injury, it is reasonable for the legislature to consider the employee's average weekly wage in determining benefits under § 72-408 and § 72-409; the difference in benefits between workers earning higher rates of pay and workers earning lower rates

of pay is rationally related to the legislature's legitimate goal of compensating injured workers in proportion to their financial loss, therefore § 72-408 and § 72-409 do not violate the equal protection clause of the state or federal constitution. *Phinney v. Shoshone Medical Ctr.*, 131 Idaho 529, 960 P.2d 1258 (1998).

Fundamental Rights.

The "fundamental rights" found in the state constitution are those expressed as a positive right. This is not to say that the state constitution is the exclusive source of fundamental rights; rights which are not directly guaranteed by the state constitution may be considered to be fundamental if they are implicit in our State's concept of ordered liberty. *Idaho Schs. for Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993).

Although the constitutional right to a speedy trial is fundamental, § 19-3501 expands this right in three specific circumstances and provides a speedy trial guarantee above and beyond those provided by the state and federal constitutions. As a statutory expansion of a fundamental constitutional right, the statutory right to a speedy trial is not fundamental. *State v. Avelar*, 129 Idaho 700, 931 P.2d 1218 (1997).

Industrial Commission Regulations.

There is a rational relationship between the legitimate legislative purpose to foster sure relief for injured workers and the attorney fee regulation promulgated by the Industrial Commission; the regulation does not violate the equal protection or due process clauses of the United States or Idaho Constitutions. *Rhodes v. Indus. Comm'n*, 125 Idaho 139, 868 P.2d 467 (1993).

Lease of Public Property.

The lease of public property to private concerns does not grant impermissible privilege or immunity to the lessee. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Means Focus Test.

State courts use the "means focus" test where the classification at issue is discriminatory on its face and clearly bears no relationship to the statute's declared purpose. *Aeschliman v. State*, 132 Idaho 397, 973 P.2d 749 (Ct. App. 1999).

Medical Malpractice.

There was no denial of equal protection under this section where a plaintiff was held to the statute of limitations set forth in § 5-219 rather than the three year statute for medical malpractice when the cause of action was based upon "foreign objects" or "fraudulent concealment" theories. *Ogle v. De Sano*, 107 Idaho 872, 693 P.2d 1074 (Ct. App. 1984).

A distinction between foreign object cases

and other malpractice cases could rationally be found to further the purpose behind the statute of limitations as, in contrast to the propriety of a diagnosis or adequacy of treatment, the presence or absence of foreign objects inadvertently left in the body may be easily verified after the passage of time; that the distinction drawn by the legislature is not sufficiently broad or that a classification operates harshly in a particular case is not grounds for a finding that it is unconstitutional. *Hawley v. Green*, 117 Idaho 498, 788 P.2d 1321 (1990).

Motor Vehicle Regulation.

Since the registration of automobiles is an appropriate and reasonable regulation on the right to use and possess them, and it is a law necessary for the ordered conduct of modern society, the defendant was subject to the law, even though she had not entered into an "agreement in equity" relinquishing her natural rights. *Parsons v. State*, 113 Idaho 421, 745 P.2d 300 (Ct. App. 1987), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

Parole.

The Court of Appeals would not address merits of defendant's claim that parole board discriminates against sex offenders with regard to granting of parole, where defendant was not yet eligible for parole. *Stillwell v. State*, 124 Idaho 366, 859 P.2d 964 (Ct. App. 1993), cert. denied, 511 U.S. 1056, 114 S. Ct. 1619, 128 L. Ed. 2d 345 (1994), cert. denied, 511 U.S. 1056, 114 S. Ct. 1619, 128 L. Ed. 2d 345 (1994).

Prearranged Funeral Plans.

Former law which regulated prearranged funeral plans was a proper exercise of the police power of the state and did not place arbitrary, capricious or unreasonable restrictions on appellant's business. *Messerli v. Monarch Memory Gardens, Inc.*, 88 Idaho 88, 397 P.2d 34 (1964).

Products Liability.

It is well settled that the "rational basis" test, or the "restrained-view" standard as it is often described, is applicable where classification statutes deal with economic matters or matters of social welfare such as the products liability statute of repose. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

Prosecutorial Discretion.

Where a prosecutor must choose between statutes with varying sentencing schemes each time a defendant's actions satisfy the elements of more than one offense, whether or not the statutes' elements are identical, choosing to charge under one or the other based upon the possible sentence, is not in and of itself a violation of equal protection. *State v.*

Payan, 132 Idaho 614, 977 P.2d 228 (Ct. App. 1998).

Where the defendant had not suggested that the state's choice of which charge to lay against him was motivated by any factor other than the large quantity of drugs he was convicted of distributing, a factor which reflected the legitimate interest of the state in curbing large-scale possession, manufacture and distribution of controlled substances, there was no violation of his equal protection rights. *State v. Payan*, 132 Idaho 614, 977 P.2d 228 (Ct. App. 1998).

Public Assistance for Children.

A rational basis existed for § 56-203B which exempts Aid to Dependent Children (ADC) recipients from incurring any liability for child support paid by the state but does not exempt parents who are eligible for, but who do not apply to receive, such public welfare benefits. *State, Dep't of Health & Welfare v. Reid*, 124 Idaho 908, 865 P.2d 999 (Ct. App. 1993).

Public Utilities Commission Orders.

The Public Utilities Commission's order imputing capital structure of holding company into wholly-owned subsidiary passed the rational basis test; the Commission's classification of companies, between wholly-owned subsidiaries and publicly-held facilities, advanced the legitimate goal of achieving telephone rates that fairly and reasonably reflect the company's cost and risk of doing business, allowing the subsidiary a fair return on its investments and those of its parent, while not imposing upon consumers unreasonably high costs for their telephone services. *General Tel. Co. v. Idaho Pub. Utils. Comm'n*, 109 Idaho 942, 712 P.2d 643 (1986).

A "fundamental right" was not implicated by the Public Utilities Commission's rate-setting order, such as would trigger a strict scrutiny treatment of the equal protection violations asserted; instead the appropriate standard of review would seem to be that applicable to economic legislation, that being the rational basis test. *General Tel. Co. v. Idaho Pub. Utils. Comm'n*, 109 Idaho 942, 712 P.2d 643 (1986).

Rational Basis Test.

Since the defendant, although incarcerated, was not a member of a suspect class, since the granting or denial of discovery does not involve a fundamental constitutional right, and since I.C.R. 57(b) is not blatantly discriminatory on its face and does not lack a discernible relationship to a governmental purpose, a rational basis test was used to review the plaintiff's equal protection claim. *Aeschliman v. State*, 132 Idaho 397, 973 P.2d 749 (Ct. App. 1999).

Reapportionment.

The reapportionment scheme of chapter 173 of 1984 (now repealed) which contained population deviations of up to 33 percent supposedly justified by Idaho's terrain, its shape, and its relatively sparse population, violated the Idaho constitutional guarantees of equal protection and the right of suffrage, especially since the record established that there were no less than ten alternative plans with population deviations of less than ten percent which served the same State policies as those advanced in justification of the 33 percent deviation. *Hellar v. Cenarrusa*, 106 Idaho 586, 682 P.2d 539 (1984).

Residency Requirement.

The residency requirement of § 67-6504 for appointment to the planning and zoning board, was not an unreasonable or irrational means to effectuate the State interest of insuring that the potential appointee had been exposed to the issues and problems of planning and zoning and to afford the governing board an opportunity to gain first-hand knowledge about his or her character and expertise, and therefore, the residency requirement did not violate the equal protection rights of a potential appointee. *Langmeyer v. State*, 104 Idaho 53, 656 P.2d 114 (1982).

Sale of Intoxicating Liquor.

A former statute prohibiting the sale of intoxicating liquor to Indians did not violate this section of the Constitution. *State v. Rorvick*, 76 Idaho 58, 277 P.2d 566 (1954).

Classifications in liquor licensing law (I. C., §§ 23-903, 23-948) do not violate the Constitution. *State v. Cantrell*, 94 Idaho 653, 496 P.2d 276 (1972).

Schedule of Rates.

Where 18 warehouse companies filed a petition with the public utilities commission to amend existing schedules of rates by increasing charges for handling grains, peas, and seeds, and commission only increased charge on peas, and withheld further action until a uniform system of accounting was established, which would be ordered forthwith, such order was final, and same is appealable. *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949).

Selective Enforcement.

While selective enforcement is a necessary prerequisite to a prima facie case of discriminatory enforcement, it is in and of itself insufficient; to prevail on such a claim, it is clear that the plaintiff also must show a deliberate and intentional plan of discrimination based upon some unjustifiable or arbitrary classification. Thus, where there had been neither a showing nor allegation of discriminatory intent by the Department of Law

Enforcement in enforcing the liquor license law against the plaintiff convention center, the plaintiff's claim of discriminatory enforcement had to fail. *Henson v. Department of Law Enforcement*, 107 Idaho 19, 684 P.2d 996 (1984).

Self Government.

The absolute right of the people of Idaho to govern themselves and to alter, reform or abolish their government is recognized in the Constitution and expressed in this section. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

Standard of Medical Care.

Sections 6-1012 and 6-1013, in establishing a standard of medical care based on the local community, do not create a classification which rests on grounds wholly irrelevant to the achievement of the state's objective and therefore such statutes do not violate the equal protection clause of either the United States Constitution or the Idaho Constitution. *LePelley v. Grefenson*, 101 Idaho 422, 614 P.2d 962 (1980).

Suspension of Driving Privileges.

A defendant is not constitutionally entitled to seek limited driving privileges at any time during his or her suspension under § 18-8002; the state has an interest in traffic safety, and the detecting of alcohol-impaired drivers, and this objective is served rationally by imposing a sanction of absolute suspension upon motorists who refuse to take a blood-alcohol test. *State v. Breed*, 111 Idaho 497, 725 P.2d 202 (Ct. App. 1986).

Taxation.

If a tax measure were to infringe upon equal protection by the creation of a suspect classification or infringement upon a fundamental right, such infringement might well justify the application of the strict scrutiny test, but in other classifications for tax purposes the rational basis test is appropriate under both the state and federal constitutional equal protection provisions. *Sheppard v. State Dep't of Emp.*, 103 Idaho 501, 650 P.2d 643 (1982).

Where, in an action by an employer to have his business exempted from unemployment compensation taxes there was no evidence indicating that the employees did or would seek to have their employer's business exempted from unemployment compensation taxes and the employees were not parties to the action, the employer had no standing to argue that requiring him as a "covered employer" to pay such taxes violated the constitutional equal protection rights of his employees. *Sheppard v. State, Dep't of Emp.*, 103 Idaho 501, 650 P.2d 643 (1982).

A classification for tax purposes is reviewed

on the rational basis test, and the rational basis test requires that a statutory classification be rationally related to a legitimate government objective. *Bon Appetit Gourmet Foods, Inc. v. State, Dep't of Emp.*, 117 Idaho 1002, 793 P.2d 675 (1989).

Tort Claims Act.

The \$100,000 recovery limitation under the Idaho Tort Claims Act was not unconstitutional on its face or as applied to recovery by parents of child killed by school bus since fair and substantial relationship existed between the limitation, upon which the school district based its insurance coverage, and the legislative objective of conserving public funds. *Packard v. Joint Sch. Dist. No. 171*, 104 Idaho 604, 661 P.2d 770 (Ct. App. 1983).

Trafficking in Controlled Substance.

Because the classification of persons convicted of trafficking in a controlled substance is neither a suspect classification nor an invidiously discriminatory classification, the rational basis test is used in claims of equal protection violation. *State v. Payan*, 132 Idaho 614, 977 P.2d 228 (Ct. App. 1998).

Unreasonable and Arbitrary Classification.

A city ordinance requiring bars and taverns where dancing takes place to be licensed, while other bars and taverns with no dancing facilities need not be licensed, does not create an unreasonable and arbitrary classification since the classification is conceivably based on a perceived difference in the likelihood of public disturbances occurring at either type of establishment. A bar or tavern which provides facilities for public dancing might very well be expected to draw larger crowds of people. And it might be expected that where large groups of people are both drinking and dancing, the possibility of incidents requiring a greater exercise of the city's police power pertinent to health and safety exists. *State v. Bowman*, 104 Idaho 39, 655 P.2d 933 (1982).

Weight Regulations of Vehicles.

Former § 49-906 (see 49-1005) authorizing commissioner of public works to issue regulations reducing weight of vehicles on public

highways of the state held constitutional. *State v. Heitz*, 72 Idaho 107, 238 P.2d 439 (1951).

Worker's Compensation Death Benefits.

Because the intent of the worker's compensations statutes is to provide for loss of monetary support, it is both rational and reasonable for the legislature to limit benefits to those individuals who were truly dependent on the deceased worker. Therefore, by leaving independent adult children of deceased workers benefitless, § 72-413 did not violate the equal protection clauses of the state and federal constitutions. *Meisner v. Potlatch Corp.*, 131 Idaho 258, 954 P.2d 676 (1998), cert. denied, 525 U.S. 818, 119 S. Ct. 56, 142 L. Ed. 2d 44 (1998).

Opinions of Attorney General. The independent state constitutional guarantees of equal protection of the law and freedom of speech are violated by the Idaho Citizens Alliance Initiative (proposed title 67, chapter 80) which would: prohibit special rights for homosexuals and same-sex marriages; restrict certain speech in public schools and expenditure of public funds and access to library materials with regard to homosexuality; and provide that no agency, department or political subdivision could forbid the consideration of private sexual behaviors as a non-job factor in the hiring of public employees. OAG 93-11.

Section 41-340 (retaliatory provisions against insurers) would likely survive a challenge under the equal protection clauses of the federal or Idaho constitutions, the due process clause of the federal constitution, or the uniformity clause of the Idaho Constitution. OAG 00-1.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 128; Vol. II, pp. 1589, 1638.

Federal and state constitutional provisions as prohibiting discrimination in employment on basis of gay, lesbian, or bisexual sexual orientation or conduct. 96 A.L.R.5th 391.

Equal protection and due process clause challenges based on sex discrimination — Supreme Court cases. 178 A.L.R. Fed. 25.

§ 3. State inseparable part of Union. — The state of Idaho is an inseparable part of the American Union, and the Constitution of the United States is the supreme law of the land.

Comp. provisions: Cal. Art. 3, § 1.

Utah. Art. 1, § 3.

Cited in: *State v. McConville*, 65 Idaho 46, 139 P.2d 485 (1943); *Epeldi v. Engelking*, 94 Idaho 390, 488 P.2d 860 (1971).

Federal Decisions.

Neither *Kramer v. Union Free School Dist.*

#15, 395 U.S. 621, 89 S. Ct. 1886, 23 L. Ed. 2d 583 (1969), nor *Cipriano v. City of Houma*, 395 U.S. 701, 89 S. Ct. 1897, 23 L. Ed. 2d 647 (1969), declaring discrimination between property owners and non-property owners in elections unconstitutional, had any application to an election on a school bond issue under § 33-404 (now § 33-405). *Muench v.*

Paine, 93 Idaho 473, 463 P.2d 939 (1970). But see, *Muench v. Paine*, 94 Idaho 12, 480 P.2d 196 (1971), holding that future general obligation bond elections limited to property owners are unconstitutional.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 128; Vol. II, p. 1589.

§ 4. Guaranty of religious liberty. — The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations, or excuse acts of licentiousness or justify polygamous or other pernicious practices, inconsistent with morality or the peace or safety of the state; nor to permit any person, organization, or association to directly or indirectly aid or abet, counsel or advise any person to commit the crime of bigamy or polygamy, or any other crime. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination, or pay tithes against his consent; nor shall any preference be given by law to any religious denomination or mode of worship. Bigamy and polygamy are forever prohibited in the state, and the legislature shall provide by law for the punishment of such crimes.

Cross ref. Religious liberty guaranteed, Const., Art. 21, § 19.

Statutes punishing polygamy and bigamy, §§ 18-1101 — 18-1103.

Comp. provisions: Mont. Art. 2, §§ 4, 5.

Utah. Art. 1, § 4.

Cited in: Board of County Comm'rs v. Idaho Health Facilities Auth., 96 Idaho 498, 531 P.2d 588 (1975); Nampa Christian Schools Found., Inc. v. State ex rel. Dep't of Emp., 110 Idaho 918, 719 P.2d 1178 (1986).

ANALYSIS

Bigamy and polygamy.

Custody of children.

Distribution of literature.

Grounds for divorce.

Motor vehicle laws.

Sunday moving pictures.

Bigamy and Polygamy.

There can be no constitutional objection to a man's believing that wife to whom he is married in this life will be his wife in hereafter, and there can be no objection to his marrying her for both "time and eternity"; but what the constitution objects to and forbids is a man having more than one wife at any one time, whether he be united, joined, or married to her by celestial marriage ceremony for "all time and eternity" or by purely civil marriage ceremony by justice of peace or other civil officer "for time only." *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908).

Bigamy and polygamy defined and distinguished, see *State v. Martinez*, 43 Idaho 180, 250 P. 239 (1926).

Custody of Children.

That a father taught his boys in accordance with the tenets of his religion not to salute the flag and that it was better to go to jail than to serve the country or participate in elections and support the country's institutions was not, considered alone, sufficient ground for finding that he was an unfit party for the custody of his children. *Meredith v. Meredith*, 91 Idaho 898, 434 P.2d 116 (1967).

The Supreme Court of Idaho rejected the contention that, in the absence of a compelling reason, the favoring of religiousness over nonreligiousness in custody proceedings is permissible. *Osteraas v. Osteraas*, 124 Idaho 350, 859 P.2d 948 (1993).

Distribution of Literature.

This section was violated by a municipal ordinance prohibiting the distribution of any printed matter along or upon any thoroughfare of such municipality, or throwing into or attaching on any motor vehicle any such matter within such municipality without a permit from a designated officer, and requiring, as a condition to obtaining the permit, a salutation of the United States flag in the designated officer's presence by reciting the Pledge of Allegiance, and furnishing such officer with information and identification of the person so distributing the printed matter. *Kennedy v. City of Moscow*, 39 F. Supp. 26 (D. Idaho 1941).

Grounds for Divorce.

It was not an infringement upon a husband's religious rights to receive and consider evidence that he had subordinated the inter-

est of his family to his activities in a religious sect and spent nearly all his time in the study of religious books, tracts, and pamphlets and in the missionary work of the sect in determining whether or not his wife was justified in leaving and was entitled to a divorce. *Meredith v. Meredith*, 91 Idaho 898, 434 P.2d 116 (1967).

Wife's criticism and ridicule of husband's religion, constituted a constitutionally protected free exercise of religious belief; however, constitutionally protected acts can create grounds for divorce. *Lepel v. Lepel*, 93 Idaho 82, 456 P.2d 249 (1969).

Motor Vehicle Laws.

Although defendant contends that he cannot practice his religion if he accepts secular regulations when he drives his motor vehicle, such a contention does not give rise to a constitutional exemption from the requirements of the motor vehicle laws. *State v. Bissett*, 116 Idaho 477, 776 P.2d 1196 (Ct. App. 1989).

Sunday Moving Pictures.

To hold that use of moving picture machine on Sunday for purpose of illustrating a sermon or religious lecture is keeping open or operating moving picture show in violation of § 18-6203 (repealed), would be a construction of the statute which would bring it into conflict with this section. *State v. Morris*, 28 Idaho 599, 155 P. 296, 1916D L.R.A. 573 (1916).

Opinions of Attorney General. Neither the express language of Idaho's religious exemption nor traditional constitutional principles of religious freedom limit administrative or judicial authority to provide medical services to children. OAG 93-9.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 129; Vol. II, p. 1589.

16A Am. Jur. 2d, Constitutional Law, §§ 464-495.

16A C.J.S., Constitutional Law, §§ 513-517, 522.

§ 5. Right of habeas corpus. — The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion, the public safety requires it, and then only in such manner as shall be prescribed by law.

Cross ref. No fees to be charged in habeas corpus proceedings, § 31-3212.

Comp. provisions: Cal. Art. 1, § 11.

Mont. Art. 2, § 19.

Ore. Art. 1, § 23.

Utah. Art. 1, § 5.

Cited in: *Mahaffey v. State*, 87 Idaho 228,

Public regulation and prohibition of broadcasts in streets and other public places as infringement of religious freedom. 10 A.L.R.2d 627.

Oath of allegiance, governmental requirement of. 18 A.L.R.2d 309.

Statute, ordinance, or other measure involving chemical treatment of public water supply as interference with religious freedom. 43 A.L.R.2d 453.

Constitutional protection of religious freedom as violated by zoning regulations. 74 A.L.R.2d 409.

Power of courts or other public agencies, in the absence of statutory authority, to order compulsory medical care for adult. 9 A.L.R.3d 1391.

Free exercise of religion as defense to prosecution for narcotic or psychedelic drug offense. 35 A.L.R.3d 939.

Erection, maintenance, or display of religious structures or symbols on public property as violation of religious freedom. 36 A.L.R.3d 1256.

Beliefs regarding capital punishment as disqualifying juror in capital case — Post-Witherspoon cases. 39 A.L.R.3d 550.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered. 21 A.L.R.5th 248.

What constitutes "church," "religious use," or the like within zoning ordinance. 62 A.L.R.3d 197.

Right of clergyman in court as professional attorney to be in clerical garb. 84 A.L.R.3d 1143.

Power of Court or other public agency to order medical treatment for child over parental objections not based on religious grounds. 97 A.L.R.3d 421.

Free exercise of religion as applied to individual's objection to obtaining or disclosing social security number. 93 A.L.R.5th 1.

First amendment challenges to display of religious symbols on public property. 107 A.L.R.5th 1.

392 P.2d 279 (1964); *Sivak v. Ada County*, 115 Idaho 762, 769 P.2d 1134 (Ct. App. 1989).

ANALYSIS

Challenging validity of conviction.

Failure to inform defendant of right to counsel.

In general.

Journalist as witness.

Probation officer's warrant.

Release from mental institution.

Use on appeal.

Challenging Validity of Conviction.

While the writ of habeas corpus is recognized in this section, the post-conviction relief statute has been construed as "an expansion," not a limitation, on the writ of habeas corpus; therefore, when a petitioner is challenging the validity of his conviction, the Idaho courts require use of the post-conviction petition and will not allow a proceeding in habeas corpus to raise those issues; the writ of habeas corpus remains for such issues as challenging the conditions of a prisoner's confinement, but not for contesting a conviction. *McKinney v. Paskett*, 753 F. Supp. 861 (D. Idaho 1990).

Failure to Inform Defendant of Right to Counsel.

The failure of the trial court to inform the defendant upon arraignment that the court would assign counsel to him if he desired an attorney and was financially unable to employ one cannot be construed as mere procedure within the rule that procedural defects are not subject to habeas corpus review. *Abercrombie v. State*, 91 Idaho 586, 428 P.2d 505 (1967).

The rule in Idaho is that the recitals of the executive as to conditions warranting a suspension of the writ of habeas corpus are conclusive, and the courts will not investigate the matter. *In re Boyle*, 6 Idaho 609, 57 P. 706, 96 Am. St. R. 286, 45 L.R.A. 832 (1899), appeal dismissed, 178 U.S. 611, 20 S. Ct. 1029, 44 L. Ed. 1215 (1900).

Idaho follows the minority rule and holds that the power to suspend the writ of habeas corpus can be exercised by the governor, or military commander. *In re Boyle*, 6 Idaho 609, 57 P. 706, 96 Am. St. R. 286, 45 L.R.A. 832 (1899), appeal dismissed, 178 U.S. 611, 20 S. Ct. 1029, 44 L. Ed. 1215 (1900).

In General.

Writ of habeas corpus is constitutional, not a statutory remedy, and statutes enacted to add to efficacy of the writ should be construed so as to promote the effectiveness of the proceeding. *Mahaffey v. State*, 87 Idaho 228, 392 P.2d 279 (1964).

The writ of habeas corpus is a remedy recognized and protected by the Constitution, and the action seeking habeas corpus is to be construed and applied to preserve, not to destroy, constitutional safeguards of liberty. *Gawron v. Roberts*, 113 Idaho 330, 743 P.2d 983 (Ct. App. 1987).

Journalist As Witness.

Because there is a compelling and legitimate governmental interest in assuring the

efficacy of the writ of habeas corpus, there is no qualified newsman's privilege, beyond the usual inquiry concerning relevance and materiality of the information sought, in a habeas corpus proceeding in which a journalist is a witness; furthermore, the obligation to attend and to give testimony in a habeas corpus proceeding wherein liberty interests are determined is at least as compelling as the duty to appear before a grand jury. *Marks v. Vehlow*, 105 Idaho 560, 671 P.2d 473 (1983).

Where a child was sought in habeas corpus proceedings and journalist who had information concerning child's whereabouts refused to answer questions on the subject, the interest of the journalist in concealing her confidential sources and information must yield to the due process rights of the child when the testimony sought was material and relevant; the journalist's interest was subordinate to the interest of the child. *Marks v. Vehlow*, 105 Idaho 560, 671 P.2d 473 (1983).

Probation Officer's Warrant.

A magistrate has jurisdiction to pass judgment upon a petition for writ of habeas corpus challenging the interim detention of a prisoner held under a probation officer's warrant alleging probation violations. *Gawron v. Roberts*, 113 Idaho 330, 743 P.2d 983 (Ct. App. 1987).

Release from Mental Institution.

It is inappropriate for a coequal court to review, by means of habeas corpus or otherwise, a committing court's decisions on whether a person committed to a mental institution has met the standards for release. *Penny v. State, Dep't of Health & Welfare*, 103 Idaho 689, 652 P.2d 193 (1982).

An application for release from mental institution upon the basis of an invalid commitment order fell outside of the committing court's continuing jurisdiction under former statute requiring automatic commitment of defendant acquitted on ground of mental disease or defect and was properly brought by means of an application for writ of habeas corpus in the district court where the person was restrained. *Penny v. State, Dep't of Health & Welfare*, 103 Idaho 689, 652 P.2d 193 (1982).

Use on Appeal.

Habeas corpus cannot be used as an appellate remedy where petitioner alleges cruel and unusual punishment and has had an adequate opportunity to appeal. *Mahaffey v. State*, 87 Idaho 233, 392 P.2d 423 (1964).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 146; Vol. II, p. 1589.

39 Am. Jur. 2d, Habeas Corpus, §§ 108-110.

39 C.J.S., Habeas Corpus, §§ 29, 141-146.

§ 6. Right to bail — Cruel and unusual punishments prohibited.

— All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excess fines imposed, nor cruel and unusual punishments inflicted.

Comp. provisions: Cal. Art. 1, §§ 12, 17.
Mont. Art. 2, §§ 21, 22.

Nev. Art. 1, §§ 6, 7.

Ore. Art. 1, § 16.

Utah. Art. 1, §§ 8, 9.

Wyo. Art. 1, § 14.

Cited in: *In re Sharp*, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908); *State v. Christensen*, 102 Idaho 487, 632 P.2d 676 (1981); *Russell v. Fortney*, 111 Idaho 181, 722 P.2d 490 (Ct. App. 1986); *State v. Romero*, 114 Idaho 92, 753 P.2d 828 (Ct. App. 1988).

ANALYSIS

Appeal.

Bail.

—After conviction.

—Excessive.

—Right.

—Hearing.

Cruel and unusual punishment.

Length of sentence.

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Appeal.

Even issues of constitutional dimension such as cruel and unusual punishment, may be barred from review in a subsequent appeal if those issues were or could have been asserted in the original appeal from a judgment of conviction. *State v. Searcy*, 120 Idaho 882, 820 P.2d 1239 (Ct. App. 1991).

Bail.

—After Conviction.

The constitutional provision guarantees bail in a reasonable sum before trial only. *In re Scriber*, 19 Idaho 531, 114 P. 29, 37 L.R.A. (n.s.) 693 (1911).

This provision does not apply to persons after trial and conviction by court of competent jurisdiction. *In re Scriber*, 19 Idaho 531, 114 P. 29, 37 L.R.A. (n.s.) 693 (1911); *In re France*, 38 Idaho 627, 224 P. 433 (1924).

This section confers a right to bail only prior to trial, and not following conviction during a pending appeal; the Idaho Constitution does not contain any provision authorizing or restricting post-conviction bail. *State v. Currington*, 108 Idaho 539, 700 P.2d 942 (1985).

—Excessive.

On charge of incest, pending appeal after conviction, \$10,000 bail was considered exces-

sive and reduced to \$2500. *State v. Clark*, 27 Idaho 48, 146 P. 1107 (1915).

—Right.

A defendant was not entitled to release on bail pending appeal after arrest and conviction of murder. *State v. Larsen*, 91 Idaho 42, 415 P.2d 685 (1966).

Where the shooting took place in daylight before witnesses, and it was apparent that the proof was evident, and the presumption great of guilt, there was no error committed in refusing to set bail. *State v. Linn*, 93 Idaho 430, 462 P.2d 729 (1969).

—Hearing.

Petitioner, a fugitive from justice from another state on charge of second degree burglary, whose petition for writ of habeas corpus was denied by district court, was entitled to a hearing on right to bail pending appeal, and determination of right to bail was subject to exercise of sound legal discretion by the district court. *In re Haney*, 77 Idaho 166, 289 P.2d 945 (1955).

Cruel and Unusual Punishment.

Statute (§ 3-301) making conviction of an offense grounds for disbarment of attorney does not add cruel or unusual punishment, nor can it be said to be additional punishment. *In re Henry*, 15 Idaho 755, 99 P. 1054, 21 L.R.A. (n.s.) 207 (1909).

It is exclusive province of legislature to declare what acts, inimical to public welfare, shall constitute crime, to prohibit same, and impose appropriate penalties for violation thereof. Judicial construction of acts of this kind is limited to inquiry whether constitutional rights of citizen have been invaded or violated. *State v. Dingman*, 37 Idaho 253, 219 P. 760 (1923).

Sterilization under provisions of sex sterilization act is not cruel and unusual punishment. *State v. Troutman*, 50 Idaho 673, 299 P. 668 (1931).

Provision in § 18-6607 (now § 18-1508) inflicting punishment of "a term of not more than life" for wilfull and lewd or lascivious acts upon the body of a child under the age of 16, though cruel and unusual punishment, was construed as permitting the trial court to fix a maximum sentence of less than life under the Indeterminate Sentence Act. *State v. Evans*, 73 Idaho 50, 245 P.2d 788 (1952).

A prisoner in maximum security because of an attempt to escape was not subjected to

cruel and unusual punishment in being deprived of water for more than twelve hours, being denied medicine when suffering physically, being unable to obtain medicine or treatment after four o'clock p.m., being furnished shoes that did not fit properly and had no arch supports, being denied proper bedding, mattresses, sheets, pillowcases and receiving only dirty blankets, being allowed to shave only once every two weeks, being subjected to intense noise from two loudspeakers, and being denied the use of tobacco. *Burge v. State*, 90 Idaho 473, 413 P.2d 451 (1966).

A sentence within the limits prescribed by statute ordinarily will not be regarded as cruel and unusual and, where the statute authorizes life imprisonment, it cannot be said as a matter of law that a sixty-year sentence is a sentence or imposes a penalty greater than does a sentence for life, and hence the imposition of a sixty-year sentence is within the statutory limits. *King v. State*, 91 Idaho 97, 416 P.2d 44 (1966).

Where defendant's conviction of involuntary manslaughter arose out of the operation of a motor vehicle, a condition of probation prohibiting him from driving was not cruel and unusual punishment. *State v. Sandoval*, 92 Idaho 853, 452 P.2d 350 (1969).

The Eighth Amendment to the United States Constitution does not require proportionality and does not prohibit a greater penalty for a lesser included offense than the maximum penalty authorized for a greater offense. *State v. Goodrick*, 102 Idaho 811, 641 P.2d 998 (1982).

Where the defendant used force and threats in his attempt to coerce the pregnant victim to fellate him, the brutal circumstances of the assault with intent to commit the infamous crime against nature were sufficient to warrant his 14-year imprisonment sentence, and the sentence did not constitute cruel and unusual punishment even if one assumed that assault with intent to commit the infamous crime against nature was a lesser included offense of the infamous crime against nature and that the maximum penalty for the infamous crime against nature was five years imprisonment. *State v. Goodrick*, 102 Idaho 811, 641 P.2d 998 (1982).

Sections 37-2705 and 37-2732 prohibiting the growing and use of marijuana do not violate the prohibitions against excessive fines and cruel and unusual punishment contained in U.S. Const., Amend. 8 and Idaho Const., Art. 1, § 6. *State v. Kelly*, 106 Idaho 268, 678 P.2d 60 (Ct. App.), cert. denied, 469 U.S. 918, 105 S. Ct. 296, 83 L. Ed. 2d 231 (1984).

Punishment of three years probation, 45 days in jail and \$1,000 fine was not grossly disproportionate to offense of possession with intent to manufacture, considering the

amount of marijuana and paraphernalia seized, nor was it clearly arbitrary and shocking to the sense of justice. *State v. Kelly*, 106 Idaho 268, 678 P.2d 60 (Ct. App.), cert. denied, 469 U.S. 918, 105 S. Ct. 296, 83 L. Ed. 2d 231 (1984).

A sentence within statutory limits is not ordinarily considered cruel and unusual punishment; moreover, there is no authority for the proposition that classification of a person's offense, or the disabilities attached to that classification can, without more, constitute cruel and unusual punishment. Before a defendant can claim a violation of his constitutional rights he must show that the punishment which he suffers by reason of the sentence imposed is actually cruel and unusual. *State v. Kelly*, 106 Idaho 268, 678 P.2d 60 (Ct. App.), cert. denied, 469 U.S. 918, 105 S. Ct. 296, 83 L. Ed. 2d 231 (1984).

Sentence of life in prison with a 15-year fixed term was not cruel and unusual punishment for a 14-year-old defendant convicted of second-degree murder of his father by laying in wait and killing his father with a rifle. While there were some extenuating personal circumstances, the murder could only be described as unprovoked and cruel. *State v. Broadhead*, 120 Idaho 141, 814 P.2d 401 (1991).

Where defendant not only raped the victim but almost killed her by stabbing her in the chest and cutting her throat, and only remarkable medical procedures saved her life, defendant's sentence of a fixed life term for rape, fifteen years to life for robbery and a fixed term of fifteen years for the aggravated battery charge was not out of all proportion to the gravity of the offense, nor was the sentence so severe as to shock the conscience of reasonable people. *State v. Brown*, 121 Idaho 385, 825 P.2d 482 (1992).

Section 20-223 does not require that the Board of Correction provide specialized treatment for sex offenders, and with regard to cruel and unusual punishment, this section is not violated by the § 20-223 psychological evaluation required before sex offenders can be paroled. *Stillwell v. State*, 124 Idaho 366, 859 P.2d 964 (Ct. App. 1993), cert. denied, 511 U.S. 1056, 114 S. Ct. 1619, 128 L. Ed. 2d 345 (1994), cert. denied, 511 U.S. 1056, 114 S. Ct. 1619, 128 L. Ed. 2d 345 (1994).

Where defendant repeatedly raped and battered a drunken woman and then beat her to death with a fire extinguisher, his fixed life sentence without possibility of parole under §§ 18-4004 and 19-2513 for the vicious and unprovoked attack, to which he pled guilty to first degree murder, was not an extreme sentence grossly disproportionate to the crime he committed, and as such, did not constitute the cruel and unusual punishment prohibited by this section. *State v. Schneider*, 126 Idaho

624, 888 P.2d 798 (Ct. App. 1995).

A sentence is cruel and unusual punishment under Const., Art 1, § 6 only when it is out of proportion to the gravity of the offense committed, and such as to shock the conscience of reasonable people. *State v. Coffelt*, 127 Idaho 439, 901 P.2d 1340 (Ct. App. 1995).

Given defendant's history of disrespect for the law, the magistrate's decision to protect society from defendant for two years and six months was not excessive, and the consecutive maximum sentences imposed were not grossly disproportionate to his crimes and did not violate the cruel and unusual punishment prohibition under Idaho Const., Art. I, § 6. *State v. Jensen*, 138 Idaho 941, 71 P.3d 1088 (Ct. App. 2003).

Length of Sentence.

Where defendant was convicted of possessing approximately nine pounds of marijuana with intent to deliver, and was sentenced as a persistent violator to 30 years with a 15-year minimum term of confinement, and the sentencing judge, in sentencing defendant, wanted to send a "message" to drug traffickers, to law enforcement officers and to the public, as well as wanting to protect society, such "message" sentences must be tailored to the facts at hand, and the goals of protecting society; sending a "message" in this case where defendant's prior record involved a long history of criminal offenses, but no violent crimes and no activities in controlled substances other than marijuana, did not require a minimum period of incarceration exceeding ten years. *State v. Gauna*, 117 Idaho 83, 785 P.2d 647 (Ct. App. 1989).

Where robbery defendant was sentenced to four to ten years in prison for taking money from restaurant employees by threatening them with knives, where the record indicated that although defendant was only 19 years old when he committed the robbery, he had an extensive criminal record consisting of other felony and misdemeanor offenses, and where defendant also pleaded guilty to assaulting a law enforcement officer while in jail awaiting disposition of the present case, the sentence imposed was not excessive and the sentencing court did not abuse its discretion by imposing same, even though extensive testimony at the sentencing hearing concerned defendant's background, growing up in an abusive household, his present difficulty in obtaining employment and his psychological difficulties. *State v. Kysar*, 116 Idaho 992, 783 P.2d 859 (1989).

Sentence of life with the entire sentence to be served as a minimum term of confinement for killing a six month old child by bludgeoning him to death was not cruel and unusual punishment since it was not out of proportion to the gravity of the offense committed and

was not so severe as to shock the conscience of reasonable persons. *State v. Pederson*, 124 Idaho 179, 857 P.2d 658 (1993).

Where a father was convicted of holding down his six-year old daughter, taping her mouth shut and raping her on several occasions without showing any remorse for his actions, his unified life sentence, with 20-years' fixed, was not out of all proportion to the gravity of the offense committed, nor was the sentence so severe as to shock the conscience of reasonable people. *State v. Coffelt*, 127 Idaho 439, 901 P.2d 1340 (Ct. App. 1995).

After considering defendant's age and the nature and circumstance of his crime, 25-year term of confinement was not grossly disproportionate where he killed another human being by shooting the victim four times at point-blank range without any provocation, as the utter disregard for human life demonstrated in the commission of crime, coupled with the fact that it was committed against a law enforcement officer, might well have led to imposition of the death penalty or a fixed life sentence if the perpetrator had been an adult, and under circumstances, even in view of defendant's youth, court could not say that the sentence was out of all proportion to the gravity of the offense or such as to shock the conscience of reasonable people. *State v. Moore*, 127 Idaho 780, 906 P.2d 150 (Ct. App. 1995).

The sentences and fines of ten years fixed followed by five years indeterminate and a fine of \$25,000 for trafficking methamphetamine and a unified six year term with three years fixed and a \$15,000 fine for trafficking in marijuana were not so out of proportion to the gravity of the offenses so as to constitute cruel and unusual punishment where the defendant was found in possession of large quantities of both drugs and the amount of damage that could be inflicted on human lives by the distribution and use of these drugs is incalculable. *State v. Rogerson*, 132 Idaho 53, 966 P.2d 53 (Ct. App. 1998).

Because the requisite intent under § 18-6710 (use of telephone to harass, etc.) had to exist at the time a telephone call was initiated, and given that defendant called a police officer a profane name 21 seconds into the conversation, defendant had the requisite intent and was properly convicted under the statute; defendant's sentence of a one-year jail term, with 315 days suspended, and probation for two years was not excessive or unreasonable. *State v. Adams*, 138 Idaho 624, 67 P.3d 103 (Ct. App. 2003).

Given that defendant refused to cooperate with police when arrested, and given that defendant repeatedly used profanity in addressing officers once defendant arrived at the county jail, there was sufficient evidence to support defendant's conviction of resisting

and obstructing an officer in violation of § 18-705; defendant's respective sentences for each charge, a 30-day jail term, with credit for time served, and a 10-day jail term, with credit for time served, was not excessive or unreasonable. *State v. Adams*, 138 Idaho 624, 67 P.3d 103 (Ct. App. 2003).

Trial court properly denied defendant's motion for a reduction in sentence under I.C.R. 35; given defendant's past history and the fact that a past rehabilitation attempt failed, the trial court properly found that probation was not appropriate, and defendant's sentence of a unified term of 30 years in prison with 10 years determinate for defendant's convictions of robbery and eluding a police officer in violation of §§ 18-6501, 49-1404 was not excessive in violation of Idaho Const. art. I, § 6 and no reduction was required. *State v. Hayes*, 138 Idaho 761, 69 P.3d 181 (Ct. App. 2003).

Period of Confinement.

Where a unified sentence has been imposed, and where defendant claims that the sentence is excessive, an appellate court examines the minimum period of confinement established by the sentencing court as the probable measure of confinement. *State v. Heer*, 116 Idaho 969, 783 P.2d 308 (Ct. App. 1989).

Sentence.

Where defendant, who was with three others, allowed decedent to be beaten, humiliated and murdered; fired shots into the dead body; after a night of rest, returned to scene of the slaying and burned the body in a shallow grave; and never reported the crime to the authorities, five year fixed sentence for conviction of accessory to murder was not cruel and unusual punishment. *State v. Toney*, 130 Idaho 858, 949 P.2d 1065 (Ct. App. 1997).

Sentencing by Judge.

Since the aggravating circumstances described in § 19-2515 are terms of art that are

commonly understood among the members of the judiciary, the potential for inconsistent application that exists as a result of jury sentencing is eliminated where the judge sentences. *State v. Lankford*, 116 Idaho 860, 781 P.2d 197 (1989), cert. denied, 497 U.S. 1032, 110 S. Ct. 3295, 111 L. Ed. 2d 803 (1990).

Opinions of Attorney General. A proposed amendment to § 19-2827 which would delete reference to comparative proportionality would not render Idaho's death penalty scheme unconstitutional, under either the federal or state constitutions. OAG 93-12.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 146; Vol. II, p. 1589.

8 Am. Jur. 2d, Bail and Recognizance, §§ 73, 74.

21 Am. Jur. 2d, Criminal Law, §§ 593, 625-631.

8 C.J.S., Bail, § 69.

16C C.J.S., Constitutional Law, § 1082.

Cruel and unusual punishment under statutes relating to sexual psychopaths. 24 A.L.R.2d 354.

Punishment for bribery in athletic contest. 49 A.L.R.2d 1237.

Burden of proof, where bail is sought before judgment but after indictment in capital case, as to whether proof is evident or the presumption great. 89 A.L.R.2d 355.

Comment note on length of sentence as violation of constitutional provisions prohibiting cruel and unusual punishment. 33 A.L.R.3d 335.

Prison conditions as amounting to cruel and unusual punishment. 51 A.L.R.3d 111.

Validity of statutes authorizing asexualization or sterilization of criminals or mental defectives. 53 A.L.R.3d 960.

When does forfeiture of currency, bank account, or cash equivalent violate excessive fines clause of Eighth Amendment. 164 A.L.R. Fed. 591.

§ 7. Right to trial by jury. — The right of trial by jury shall remain inviolate; but in civil actions, three-fourths of the jury may render a verdict, and the legislature may provide that in all cases of misdemeanors five-sixths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, by the consent of all parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions the jury may consist of twelve or of any number less than twelve upon which the parties may agree in open court. Provided, that in cases of misdemeanor and in civil actions within the jurisdiction of any court inferior to the district court, whether such case or action be tried in such inferior court or in district court, the jury shall consist of not more than six.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 7. **Right to trial by jury.** — The right of trial by jury shall remain inviolate; but in civil actions, three-fourths of the jury may render a verdict, and the legislature may provide that in all cases of misdemeanors five-sixths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions and cases of misdemeanor the jury may consist of twelve or of any number less than twelve upon which the parties may agree in open court."

It was amended as proposed by S. L. 1933, p. 468, S.J.R. No. 1, and ratified at the general election in November 1934, to read as follows:

"§ 7. **Right to trial by jury.** — The right of trial by jury shall remain inviolate; but in civil actions, three-fourths of the jury may render a verdict, and the legislature may provide that in all cases of misdemeanors five-sixths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions the jury may consist of twelve or of any number less than twelve upon which the parties may agree in open court. Provided, that in civil actions involving not more than five hundred dollars, exclusive of costs, and in cases of misdemeanor, the jury shall consist of not more than six."

It was amended as proposed by S.J.R. No. 6(S. L. 1965, p. 952) and ratified at the general election on November 8, 1966, to read as follows: "§ 7. **Right to trial by jury.** — The right of trial by jury shall remain inviolate; but in civil actions, three-fourths of the jury may render a verdict, and the legislature may provide that in all cases of misdemeanors five-sixths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, expressed in open court, and in civil actions by the consent of the parties, signified in such manner as may be prescribed by law. In civil actions the jury may consist of twelve or of any number less than twelve upon which the parties may agree in open court. Provided, that in cases of misdemeanor and in civil actions within the jurisdiction of any court inferior to the district court, whether such case or action be tried in such inferior court or in district court, the jury shall consist of not more than six."

It was further amended, as proposed, by S.L. 1982, p. 931, S.J.R. No. 112 and ratified

at the general election on November 2, 1982 to read as it now appears.

Comp. provisions: Cal. Art. 1, § 16.

Mont. Art. 2, § 26.

Ore. Art. 1, §§ 11, 17.

Utah. Art. 1, § 10.

Cited in: *Stockton v. Oregon Short Line R.R.*, 170 F. 627 (C.C.D. Idaho 1909); *In re Sharp*, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908); *State v. Whisler*, 32 Idaho 520, 185 P. 845 (1919); *State v. Nadlman*, 63 Idaho 153, 118 P.2d 58 (1941); *State v. Rutten*, 73 Idaho 25, 245 P.2d 778 (1952); *State v. Fedder*, 76 Idaho 535, 285 P.2d 802 (1955); *Kelson v. Ahlborn*, 87 Idaho 519, 393 P.2d 578 (1964); *Burch v. Louisiana*, 441 U.S. 130, 99 S. Ct. 1623, 60 L. Ed. 2d 96 (1979); *State v. Gibson*, 108 Idaho 202, 697 P.2d 1216 (Ct. App. 1985); *Jones v. EG & G Idaho, Inc.*, 111 Idaho 591, 726 P.2d 703 (1986); *Ross v. Coleman Co.*, 114 Idaho 817, 761 P.2d 1169 (1988); *Pierson v. Brooks*, 115 Idaho 529, 768 P.2d 792 (Ct. App. 1989); *State v. Fain*, 116 Idaho 82, 774 P.2d 252 (1989); *State v. Charboneau*, 116 Idaho 129, 774 P.2d 299 (1989); *State v. Fodge*, 121 Idaho 192, 824 P.2d 123 (1992).

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Admissibility of Prior Conviction.

The use of a prior felony conviction for impeachment purposes did not deprive defendant of his right to a fair and impartial jury trial where a jury instruction limited the prejudicial impact by stating that the conviction could be considered only on the issue of credibility and that the conviction did not necessarily impair defendant's credibility. *State v. Knee*, 101 Idaho 484, 616 P.2d 263 (1980).

Application.

Means of sanction other than imprisonment, such as fines and the deprivation of privileges or offices, if serious and substantial enough, can rise to the level of criminal sanction, to which this section would apply. *State v. Bennion*, 112 Idaho 32, 730 P.2d 952 (1986).

Common Law Right.

Since the claimed cause of action, alcohol provider liability for injury suffered by the intoxicated person to whom the alcohol was provided, did not exist at common law at the time the state Constitution was adopted, the right to have a jury determine the merits of such a case is not protected by the Constitution. *Coghlan v. Beta Theta Pi Fraternity*, 133 Idaho 388, 987 P.2d 300 (1999).

Construction.

This section guarantees a jury trial whenever the possible sanction includes imprisonment. *State v. Bennion*, 112 Idaho 32, 730 P.2d 952 (1986).

Contempt.

Although the penalty for a contempt involving disobedience of a court order is a possible fine or jail sentence, the constitutional guarantees to a jury trial found in this section are not automatically applicable. *Bayes v. State*, 117 Idaho 96, 785 P.2d 660 (Ct. App. 1989).

In a serious contempt, or one punishable as a felony, there is a right to a trial by jury; in a petty contempt, or one punishable as a misdemeanor, there is no right to a trial by jury. *Bayes v. State*, 117 Idaho 96, 785 P.2d 660 (Ct. App. 1989).

Criminal Cases.

Word "trial," as used in this section means an issue of fact presented by plea of accused. Where accused, with full knowledge of his constitutional rights, enters plea of guilty, and presents no issue of fact for trial, there can be no trial, and conviction is accused's admission, and takes the place of verdict of jury. In re Dawson, 20 Idaho 178, 117 P. 696, 35 L.R.A. (n.s.) 1146 (1911).

An instruction taking from the jury question of a former conviction as an element of offense of being persistent violator of the prohibition law is prejudicial. *State v. Dunn*, 44 Idaho 636, 258 P. 553 (1927).

Defendant convicted in municipal court of driving car on city street while intoxicated in violation of city ordinance on appeal to district court was entitled to trial by jury, since defendant was entitled to a trial de novo as though started or commenced in district court, and in district court the defendant is entitled to jury trial. *Miller v. Winstead*, 75 Idaho 262, 270 P.2d 1010 (1954).

Defendants have the right to be personally present at each stage of their trial, including the impaneling of the jury. *State v. Carver*, 94 Idaho 677, 496 P.2d 676 (1972).

Where the record did not show that a defendant knowingly and intelligently waived his right to a jury trial, his guilty pleas were invalid. *State v. Peterson*, 98 Idaho 706, 571 P.2d 767 (1977).

Neither the United States Constitution nor this section requires the participation of a jury in the sentencing process in a capital case. *State v. Sivak*, 105 Idaho 900, 674 P.2d 396 (1983), cert. denied, 468 U.S. 1220, 104 S. Ct. 3591, 82 L. Ed. 2d 887 (1984).

Although the Idaho Traffic Infractions Act defines infractions as "civil public offenses," for purposes of constitutional analysis, they must be considered criminal. *State v. Bennion*, 112 Idaho 32, 730 P.2d 952 (1986).

This section provides a trial by jury for all public offenses which are potentially punishable by imprisonment or where potential fines or other sanctions are punitive in nature. *State v. Wheeler*, 114 Idaho 97, 753 P.2d 833 (Ct. App. 1988).

In prosecution for driving under the influence, the defendant had a right to a jury trial. *State v. Wheeler*, 114 Idaho 97, 753 P.2d 833 (Ct. App. 1988).

Where plea negotiations were entered into but no agreement was reached, there was no merit to the defendant's contention that, by entering into such negotiations his constitutional right to a jury trial had been violated. *Stuart v. State*, 118 Idaho 865, 801 P.2d 1216 (1990).

Participation of a jury in the sentencing process in a capital case is not required under this section. *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991), cert. denied, 503 U.S. 908, 112 S. Ct. 1268, 117 L. Ed. 2d 495 (1992), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992), cert. denied, 503 U.S. 908, 112 S. Ct. 1268, 117 L. Ed. 2d 495 (1992).

Death Sentence.

Neither the United States Constitution nor this section requires the participation of a jury in the sentencing process in a capital case. *State v. Beam*, 109 Idaho 616, 710 P.2d 526 (1985), cert. denied, 476 U.S. 1153, 106 S. Ct. 2260, 90 L. Ed. 2d 704 (1986).

This section does not mandate a jury-imposed death sentence. *State v. Fetterly*, 109 Idaho 766, 710 P.2d 1202 (1985), cert. denied, 479 U.S. 870, 107 S. Ct. 239, 93 L. Ed. 2d 164 (1986).

The imposition of the death penalty with no participation by the jury in the sentencing process does not violate the Idaho Constitution. *State v. Lankford*, 116 Idaho 860, 781 P.2d 197 (1989), cert. denied, 497 U.S. 1032, 110 S. Ct. 3295, 111 L. Ed. 2d 803 (1990).

The United States Supreme Court has clearly stated that it is not a violation of a defendant's constitutional rights to be sentenced to death by a judge instead of a jury. *Fetterly v. Paskett*, 747 F. Supp. 594 (D. Idaho 1990), rev'd on other grounds, 997 F.2d 1295 (9th Cir. 1993).

In Idaho, it is well settled that punishment in a capital case is to be determined by a judge rather than a jury. *State v. Hoffman*, 123 Idaho 638, 851 P.2d 934 (1993), cert. denied, 511 U.S. 1012, 114 S. Ct. 1387, 128 L. Ed. 2d 61 (1994).

Declaratory Judgment.

Relief by way of a declaratory judgment is not available in a case where negligence of the defendant is the determinative issue due to the right of the parties to a jury trial in a negligence case. *Temperance Ins. Exch. v. Carver*, 83 Idaho 487, 365 P.2d 824 (1961).

Deprivation of Right.

Where the trial court committed reversible error in denying appellant's motion to amend cross complaint thereby leaving only the issue of fraud, the appellants were deprived of a jury trial contrary to the provisions of this section. *Cooper v. Wesco Bldrs., Inc.*, 76 Idaho 278, 281 P.2d 669 (1955).

Where any waiver of a jury trial by the defendant's counsel resulted from confusion and misunderstanding, no waiver was included in the court's minutes, and no waiver was personally entered by the defendant, the record did not demonstrate an express waiver by the defendant of his right to a jury trial, and absent an express waiver by the defendant, the court erred in proceeding with the trial. *State v. Wheeler*, 114 Idaho 97, 753 P.2d 833 (Ct. App. 1988).

Defendant argued that he was denied a jury of twelve jurors when three of the jurors who voted "no" as to defendant's negligence abstained from further discussions concerning the amount of negligence and damages to be assessed to the parties; but this section of the Idaho Constitution specifically and clearly states that "three-fourths of the jury may render a verdict" and the verdict in this case was clearly rendered by the nine (three-fourths) of the twelve jurors and meets the constitutional requirements. *Watson v.*

Navistar Int'l Transp. Corp., 121 Idaho 643, 827 P.2d 656 (1992).

Eminent Domain.

Power of eminent domain is not action at law within uniform interpretation of that term; and right to trial by jury in proceedings for condemnation does not exist as constitutional right. *Portneuf Irrigation Co. v. Budge*, 16 Idaho 116, 100 P. 1046, 18 Ann. Cas. 674 (1909).

Because eminent domain authority arises from an inherent sovereignty of the state to take property for its own use, such proceedings do not come within the scope of the Idaho Constitution pertaining to trial by jury. *State ex rel. Flandro v. Seddon*, 94 Idaho 940, 500 P.2d 841 (1972).

Equitable and Legal Issues.

In action where it is necessary to show deed absolute in form to be mortgage, which issue is incidental to main object which is recovery of money, plaintiff is entitled to trial before jury. *Johansen v. Looney*, 30 Idaho 123, 163 P. 303 (1917).

In suit on account defendant was entitled to trial by jury where he counterclaimed for damages even though he also requested an accounting, since examination of account was incidental to the action on and defenses under the contract. *Farmer v. Loofbourrow*, 75 Idaho 88, 267 P.2d 113 (1954).

Since the legal issues were "incidental" to the equitable, and both legal and equitable issues were "inextricably intertwined" and the bank in their foreclosure action had made no showing of "imperative circumstances" in its case which would deprive it of equitable relief if the legal issues were tried to a jury there was no reason to deny defendant his most precious constitutional right to trial by jury. *David Steed & Assocs. v. Young*, 115 Idaho 247, 766 P.2d 717 (1988).

It was irrelevant whether the legal issues in its foreclosure action were "incidental" to the plaintiff's equitable claims in defendant's compulsory counterclaim since the right to a jury trial is specifically guaranteed under both Idaho Constitution, Art. 1, § 7 and I.R.C.P. 38(a). *David Steed & Assocs. v. Young*, 115 Idaho 247, 766 P.2d 717 (1988).

Equitable Issues.

Guaranty that right of trial by jury shall remain inviolate has no reference to equity cases. *Christensen v. Hollingsworth*, 6 Idaho 87, 53 P. 211, 96 Am. St. R. 256 (1898); *Shields v. Johnson*, 10 Idaho 476, 79 P. 391, 3 Ann. Cas. 245 (1904); *Morton v. Morton Realty Co.*, 41 Idaho 729, 241 P. 1014 (1925).

An action for divorce is an action in equity; thus, the right to a jury trial does not exist in divorce actions. *Rudd v. Rudd*, 105 Idaho 112, 666 P.2d 639 (1983).

Historically, the right to trial by jury existed only in cases at common law, not in cases triable in a court of equity; thus, by preserving the right as it existed, this constitutional provision merely preserves the right to a trial by jury in cases at common law and is not intended to extend the right of trial by jury to suits in equity. *Rudd v. Rudd*, 105 Idaho 112, 666 P.2d 639 (1983).

Since the right to a trial by jury is inviolate under the Constitution of the State of Idaho, a party to an equity action has a right to a jury trial on the legal causes of action raised pursuant to his compulsory counterclaim unless there is a clear showing of imperative circumstances which would cause the equity claimant irreparable harm while affording a jury trial in the legal cause. *David Steed & Assocs. v. Young*, 115 Idaho 247, 766 P.2d 717 (1988).

This section does not extend the right of trial by jury to actions solely involving equity issues such as the accounting and winding up of a partnership — a matter traditionally the province of the courts of equity. *Thomas v. Schmelzer*, 118 Idaho 353, 796 P.2d 1026 (Ct. App. 1990).

This section's guaranty of the right of trial by jury has no application to suits in equity; defenses to foreclosure raised by the mortgagor did not change the nature of the proceeding so as to entitle the mortgagor to a jury trial. *Parrott v. Wallace*, 127 Idaho 306, 900 P.2d 214 (Ct. App. 1995).

Erroneous Instructions.

This section guarantees a trial by a jury which has not been misled by erroneous instructions to a defendant's prejudice especially where the evidence presents questions of fact which necessitate the verdict of a properly instructed jury for their determination. *State v. Taylor*, 59 Idaho 724, 87 P.2d 454 (1939); *State v. Craner*, 60 Idaho 620, 94 P.2d 1081 (1939).

The right to trial by jury means a trial free from prejudicial error by a jury which has not been misdirected by the court as to the law governing the case. *State v. Dickens*, 68 Idaho 173, 191 P.2d 364 (1948).

Fair and Reasonable Representation.

In an appeal from convictions of burglary challenging the constitutionality of the jury selection process, where the evidence showed that Hispanics, who accounted for 8.2 percent of the county population, were underrepresented in the jury pool by an absolute disparity of five percent and were 61 percent less likely than the average members of the community to be called for jury service, such figures, taken together, were sufficient to show a lack of "fair and reasonable" representation, thereby imposing upon the state an obligation to justify the underrepresentation.

However, the state met this burden by showing that the master jury list was derived from county lists of adult, licensed drivers and registered booters, since such source lists are commonly used and serve a significant state interest in maintaining an efficient, practical jury selection system. *State v. Lopez*, 107 Idaho 726, 692 P.2d 370 (Ct. App. 1984).

In order to establish a prima facie violation of the "fair cross-section" requirement, the defendant must show (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury selection process. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

Gross population figures may be used for comparison with a jury pool, to establish a prima facie case with regard to underrepresentation of a particular group in such a jury pool. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

Hispanic people represent a distinctive group in the population, and the use of Hispanic surnames to identify this group with regard to evaluating a jury pool is an acceptable practice for the purposes of establishing a prima facie violation of the "fair cross-section" requirement. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

Felonies.

Trial for felony must be by jury of twelve and must result in unanimous verdict. *State v. Scheminisky*, 31 Idaho 504, 174 P. 611 (1918).

Verdict by five-sixths of jury is confined to misdemeanor cases and such limitation cannot be disregarded by court. *State v. Scheminisky*, 31 Idaho 504, 174 P. 611 (1918); *State v. Jutila*, 34 Idaho 595, 202 P. 566 (1921).

Forfeiture Proceedings.

There is a right to jury trial for forfeiture proceedings under § 37-2744A because that

right existed at common law when the Idaho Constitution was adopted and that, to the extent that § 37-2744A denies such right, it is unconstitutional. *Idaho Dep't of Law Enforcement ex rel Cade v. Real Property Located in Minidoka County*, 126 Idaho 411, 885 P.2d 381 (1994).

Immunity from Prosecution.

Where criminal charge against petitioner was dismissed and thereafter petitioner was granted immunity under § 18-4604 (repealed) to testify at preliminary hearing of accomplices, petition had no ground on which to complain that to testify would deprive him of a jury trial. *Dutton v. District Court*, 95 Idaho 720, 518 P.2d 1182 (1974).

In General.

The constitutional right of trial by jury has been interpreted to secure that right as it existed at common law when the Idaho Constitution was adopted. *Sheets v. Agro-West, Inc.*, 104 Idaho 880, 664 P.2d 787 (Ct. App. 1983).

Instructions Deemed Proper.

Where jurors were instructed that it was the duty of each of them to consider the evidence for the purpose of arriving at a verdict "if you can do so," and that they should not be influenced to decide any question in a particular way because a majority of the jurors, or any of them, favor such a decision, and where the jurors were further instructed that in order to reach a verdict, all of them must agree, defendant was not entitled to a more explicit instruction on the possibility of a "hung jury" in order to fulfill his right to a jury trial under either the United States Constitution or the Idaho Constitution. *State v. Smith*, 117 Idaho 225, 786 P.2d 1127 (1990).

In prosecution for embezzlement and forgery, jury instructions which stated that to find defendant guilty of charge of theft by embezzlement each of the elements in the charge must be proven beyond a reasonable doubt that defendant with fraudulent intent appropriated funds belonging to her employer and applied these funds toward the purchase of lots 3 and/or 4 of a certain subdivision, were proper even though defendant contended that the instructions failed to address the requirement that the jury unanimously find, beyond a reasonable doubt, that defendant applied the moneys either to purchase of lot 3, lot four, or both, and since the court gave a separate instruction defining "fraudulent intent" as well as instructions as to how a defense to embezzlement is shown and that its verdict must be unanimous and the elements of the crime embezzlement as given in the instructions were drawn from §§ 18-2403 and 18-2407, the trial court fully instructed the jury on the elements which the state had to prove

in order for the jury to reach a unanimous finding of guilt. *State v. Hamilton*, 129 Idaho 938, 935 P.2d 201 (Ct. App. 1997).

Issues for Jury.

Issue of negligence of warehouse in failing to move wheat from warehouse due to danger from flood was for the jury. *Ennis v. Casey*, 72 Idaho 181, 238 P.2d 435 (1951).

In an interpleader proceeding by insurance company which joined several adverse claimants where the insurance company thereafter filed two affirmative defenses to counterclaim asserted by one of the claimants, the insurer was entitled to a decision by the jury on both issues raised, hence the district court committed reversible error where it submitted only one of the issues to the jury. *Gem State Mut. Life Ass'n v. Gray*, 77 Idaho 157, 290 P.2d 217 (1955).

In a wrongful death action, the determination of whether the decedent had been an employee of defendant, rather than an independent contractor or a casual employee, while engaged in making repairs to broken equipment at the bottom of a drill shaft, was a question for the jury, for the question bore not only upon the issue of the court's jurisdiction but also upon the standard of care that defendant owed to the decedent. *Anderson v. Gailey*, 97 Idaho 813, 555 P.2d 144 (1976).

In determining the issue of qualified immunity, the court should submit special interrogatories as to the factual dispute to the jury and then make its qualified immunity decision based upon the answers to the interrogatories; this procedure furthers the state constitutional mandate to hold the right to a jury trial "inviolable." *Lubcke v. Boise City/ADA City Hous. Auth.*, 124 Idaho 450, 860 P.2d 653 (1993).

Jeopardy.

Plea of once in jeopardy raises an issue of fact which is not demurrable and must be tried by a jury. *State v. Crawford*, 32 Idaho 165, 179 P. 511 (1919).

Juror Qualifications.

The state is entitled to use voter registration and driver's license lists as a means of selecting jurors, and the state may establish minimum qualifications for jurors where the qualifications relate to the juror's competence to understand and administer the law. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

It would be patently unreasonable to require the State to utilize jurors who are not proficient in the English language, unable to understand testimony, directions of the court,

or read exhibits and instructions; furthermore, it is not difficult to perceive that the State has a significant interest in the integrity of the jury system, and that such an interest is manifestly and primarily advanced by limiting jurors to those who are capable of understanding the proceedings, and as long as the qualification is equally administered as to all foreign language speakers there is no constitutional infirmity in the requirement that jurors be competent in English. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

Jury Lists.

The state is free to designate the source of jury lists, so long as the source reasonably reflects a cross-section of the population suitable in character and intelligence for that civic duty. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

Defendant's right to a fair trial was not violated nor was he prejudiced as a result of late delivery of the jury panel list. *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991), cert. denied, 503 U.S. 908, 112 S. Ct. 1268, 117 L. Ed. 2d 495 (1992), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

Limitations on Damages.

Section 6-1603 does not violate the right to jury trial as guaranteed by this section of the Idaho Constitution because the jury is still allowed to act as the fact finder in personal injury cases; the statute simply limits the legal consequences of the jury's finding. *Kirkland ex rel. Kirkland v. Blain County Med. Ctr.*, 134 Idaho 464, 4 P.3d 1115 (2000).

Misdemeanors.

The provision in the amendment of 1934 prescribing trial by six jurors in cases of misdemeanor makes no distinction between minor and major misdemeanors or those which are indictable. *State v. Conner*, 59 Idaho 695, 89 P.2d 197 (1939).

Nature of Right in General.

Guaranty of right to trial by jury secures that right as it existed under common law and territorial statutes in force at date of adoption of Constitution. *Christensen v. Hollingsworth*, 6 Idaho 87, 53 P. 211, 96 Am. St. R. 256 (1898); *Shields v. Johnson*, 10 Idaho

476, 79 P. 391, 3 Ann. Cas. 245 (1904); *People ex rel. Brown v. Burnham*, 35 Idaho 522, 207 P. 589 (1922); *State v. Miles*, 43 Idaho 46, 248 P. 442 (1926).

Right of trial by jury means, in general, right as it existed in England at time of separation of American colonies subject to such exception as legislature may have expressly made in exercise of power conferred by Constitution. *State v. Jutila*, 34 Idaho 595, 202 P. 566 (1921).

This provision must be read in light of law existing at time of adoption of Constitution. It is not intended to extend right of trial by jury but simply to secure that right as it existed at time of adoption of Constitution. *People ex rel. Brown v. Burnham*, 35 Idaho 522, 207 P. 589 (1922); *Morton v. Morton Realty Co.*, 41 Idaho 729, 241 P. 1014 (1925).

Right of trial by jury is not necessarily inherent to actions unknown to common law or to new and different rights or remedies not in existence or in contemplation of Constitution when adopted. *Brady v. Place*, 41 Idaho 747, 242 P. 314, 243 P. 654 (1925).

Right of trial by jury is common law right and is strictly enforceable only as to rights, remedies, and actions triable by jury under common law. *Brady v. Place*, 41 Idaho 747, 242 P. 314, 243 P. 654 (1925).

The founders of the Idaho Constitution recognized that the practical considerations concerning delay, retrials and hung juries, are important considerations in arriving at justice, and that justice is served without prejudicing a fair trial by reducing the requirement of unanimous juries to a three-fourths requirement, and to adopt the argument of plaintiff and require that the same nucleus of jurors approve each material issue in the case would increase substantially the risk of hung juries and mistrials without any substantial concomitant increase in the fairness or justice of the trial. *Tillman v. Thomas*, 99 Idaho 569, 585 P.2d 1280 (1978).

The right to a jury trial is not jurisdictional; it can be waived. *State v. Wheeler*, 114 Idaho 97, 753 P.2d 833 (Ct. App. 1988).

The right to a fair and impartial jury is one of the most sacred and important of the guarantees of the Constitution; where it has been infringed, no inquiry as to the sufficiency of the evidence to show guilt is indulged and a conviction by a jury so selected must be set aside. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

New Trial.

The constitutional right to trial by jury in civil cases, under the state constitution, is

subject to the trial court's discretionary power to grant a new trial; the limits of this power are defined by the "abuse of discretion" standard of review. Because the discretionary power to grant a new trial does not contravene the state constitution, the abuse of discretion appellate standard is also free from constitutional infirmity. *Sheets v. Agro-West, Inc.*, 104 Idaho 880, 664 P.2d 787 (Ct. App. 1983).

Where the trial court discloses its reasons for granting or denying motions for a new trial and/or remittitur or additur, or those reasons are obvious from the record itself, the standard for granting a new trial under I.R.C.P. 59(a)(5) permits an adequate review of the decision of the trial court in order to insure the right to trial by jury guaranteed by this section. *Smallwood v. Dick*, 114 Idaho 860, 761 P.2d 1212 (1988).

Selection of Jurors.

While constitution guarantees right to trial by jury, it does not guarantee to any person "right" to serve on jury. *State v. Kelley*, 39 Idaho 668, 229 P. 659 (1924).

A systematic and arbitrary exclusion of any class or race of people from the jury list on account of membership in that class or race is a denial of equal protection of the laws to any one who is a member of such class or race and who is placed on trial for a crime before a jury so drawn. *State v. Walters*, 61 Idaho 341, 102 P.2d 284 (1940).

There should be a substantial compliance with the statute in taking the names of prospective jurors from the poll lists and in the preparation of jury lists by the board of commissioners; lists must not be selected by individual members. The action should be taken by the board of commissioners as such. *State v. Walters*, 61 Idaho 341, 102 P.2d 284 (1940).

—Challenge.

While a constitutional challenge to the jury selection process must focus upon systematic underrepresentation of an identifiable group like Hispanics, no such requirement applies to a statutory challenge; a challenge under the Uniform Jury Selection and Service Act (§ 2-201 et seq.) may be based broadly upon a showing that the statutory violation has substantially affected the random nature and objectivity of the process. *State v. Lopez*, 107 Idaho 726, 692 P.2d 370 (Ct. App. 1984).

Fact that defendant was forced to use final peremptory challenge to remove an allegedly biased juror was not cause for granting new trial where defendant's further argument that this resulted in the seating of a biased alternate juror was based only on unsupported speculation. *State v. Kuhn*, — Idaho —, 85 P.3d 1109 (Ct. App. 2003).

Statutory Actions.

Since a paternity suit is not a common-law action, defendant was not unconstitutionally

deprived of the right to a jury trial as it was within the legislature's province to provide for other methods of trial than by jury in such proceedings. *Comish v. Smith*, 97 Idaho 89, 540 P.2d 274 (1975).

The 1988 revision of § 19-2132 does not violate the right to a jury trial as it is guaranteed by this section. *State v. Pratt*, 125 Idaho 594, 873 P.2d 848, cert. denied, 513 U.S. 1005, 115 S. Ct. 521, 130 L. Ed. 2d 426 (1994).

Summary Proceedings.

The constitutional guarantee of the right to trial by jury does not apply to special and summary proceedings created by statute subsequent to the adoption of the constitution where they are not in the nature of actions at common law and are dissimilar to such actions. *Blue Note, Inc. v. Hopper*, 85 Idaho 152, 377 P.2d 373 (1962).

Although the prosecutions of all public offenses are criminal actions, pursuant to Idaho Const. Article 5, § 1, and all criminal actions required jury trials, this section has sufficient flexibility to allow for summary proceedings if the sanction is decriminalized. *State v. Bennion*, 112 Idaho 32, 730 P.2d 952 (1986).

In providing for summary proceedings only for traffic infractions subject not to imprisonment but only to a thoroughly decriminalized sanction of a maximum fine of \$100, the Legislature was true to the intent and scope of this section. *State v. Bennion*, 112 Idaho 32, 730 P.2d 952 (1986).

Taxpayer's Refund Action.

The district court did not err in denying a jury trial in action by taxpayers challenging contract between county and appraiser and seeking a county wide tax rollback and refund since there was no constitutional or statutory basis for right to jury trial in such an action. *Coeur D'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

There is no state constitutional right to a jury trial in a taxpayer's refund action. *Coeur D'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

Neither under the federal Constitution nor under this section is a taxpayer entitled to a jury trial in a suit to obtain a tax refund. *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572, 716 P.2d 1344 (Ct. App. 1986).

Traffic Infractions.

The denial of the right to a jury trial under the Idaho Traffic Infractions Act does not violate the state constitution. *State v. Hines*, 117 Idaho 198, 786 P.2d 589 (Ct. App. 1990).

Unauthorized Reference.

In an action at law, parties are entitled as of right to trial by jury, and court can not refer

case against objection of party, even though it requires examination of long account. *Russell v. Alt*, 12 Idaho 789, 88 P. 416, 13 L.R.A. (n.s.) 146 (1907).

Venue.

Right of trial by jury does not necessarily mean trial by jury in county where offense was committed, and, where fair trial can not be had there, venue may be changed. *State v. Miles*, 43 Idaho 46, 248 P. 442 (1926).

The statute giving jurisdiction of an offense committed within 500 yards of the boundary of two counties to either county was not unconstitutional in that it deprived the offender of a jury trial in the county where the offense was committed. *Kaseris v. Justice Court*, 65 Idaho 347, 144 P.2d 469 (1943).

Waiver of Rights.

Where both parties move for a directed verdict and do nothing more, a jury is thereby waived, but not so if either or both request a submission to the jury in the event his or their motions are denied, or where the motions of the respective parties are on different grounds. *Oregon S.L.R.R. v. Mountain States Tel. & Tel. Co.*, 41 Idaho 4, 237 P. 281 (1925); *Intermountain Ass'n of Credit Men v. Pierce*, 43 Idaho 279, 251 P. 615 (1926).

Waiver of jury trial can not be made or enforced except in manner provided by statute; it will not be implied in doubtful cases. *Neal v. Drainage Dist. No. 2*, 42 Idaho 624, 248 P. 22 (1926).

There was no waiver of right of trial by jury where defendant in writing prior to trial requested a jury though minutes of court disclosed that case was set down for trial by the court, since the minutes did not contain any statement that defendant consented to trial by the court. *Farmer v. Loofbourrow*, 75 Idaho 88, 267 P.2d 113 (1954).

This section is not violated by a rule of court requiring a litigant to make a timely request for a jury trial. *R.E.W. Constr. Co. v. District Court*, 88 Idaho 426, 400 P.2d 390 (1965).

The phrase "prescribed by law" does not necessarily mean "as prescribed by the legislature," but waiving a jury trial is a procedural matter and may be regulated by rule of court. *Allen Steel Supply Co. v. Bradley*, 89 Idaho 29, 403 P.2d 859 (1965).

A pre-trial order declaring that the contested issues of law were the proximate cause of an accident, whether it was attributable to the negligence of the defendant employee or the contributory negligence of defendant, and whether the defendant employee, at the time of the accident, was the agent, servant, and employee of the defendant employer engaged in some purpose or duty in furtherance of his employment did not withdraw those issues from the jury or constitute a waiver by the parties of their right to trial by jury on such

issues. *Van Vranken v. Fence-Craft*, 91 Idaho 742, 430 P.2d 488 (1967).

The Idaho Constitution does not guarantee the right to waive a jury trial in a felony case. *State v. Creech*, 99 Idaho 779, 589 P.2d 114 (1979).

Where the defendant himself sought a trial to the court, he thereby waived his right to a jury trial. *State v. Davis*, 104 Idaho 523, 661 P.2d 308 (1983).

The adoption of I.R.C.P. 38(b) was a proper exercise of the inherent rule making power of this court, and merely establishes the orderly procedure to be employed in determining whether a party has waived the right to trial by jury. *City of Pocatello v. Anderton*, 106 Idaho 370, 679 P.2d 647 (1984).

In a civil case, the right to trial by jury must be timely asserted or it will be deemed waived. *Golden Condor, Inc. v. Bell*, 106 Idaho 280, 678 P.2d 72 (Ct. App. 1984).

A waiver of the right to a jury trial in felony cases will only be sufficient where the defendant, after being advised of his right to a trial by jury, personally waives such right, either in writing or in open court for the record; thus, a stipulation by counsel and the trial judge waiving a jury trial was not sufficient where the defendant was never personally asked whether he waived this right. *State v. Swan*, 108 Idaho 963, 703 P.2d 727 (Ct. App. 1985).

Because trial by jury is one of the fundamental guaranties of the right and liberties of the people, every reasonable presumption should be indulged against its waiver. *State v. Wheeler*, 114 Idaho 97, 753 P.2d 833 (Ct. App. 1988).

The method of waiving a jury trial is a procedural matter and is governed by rules promulgated by the Supreme Court. *State v. Wheeler*, 114 Idaho 97, 753 P.2d 833 (Ct. App. 1988).

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, pp. 146, 209; Vol. II, p. 1589.

16 C.J.S. Constitutional Law, § 49.

81A C.J.S., States, § 45.

Withdrawal of waiver of right to jury trial in criminal case. 46 A.L.R.2d 719; 9 A.L.R.4th 1041; 48 A.L.R.4th 747.

Withdrawal of waiver of jury trial. 64 A.L.R.2d 506.

Contractual jury trial waivers in state civil cases. 42 A.L.R.5th 53.

Sufficiency of waiver of full jury. 93 A.L.R.2d 410.

Statute reducing number of jurors as violative of right to trial by jury. 47 A.L.R.3d 895.

Authority of state court to order jury trial in civil case where jury has been waived or not demanded by parties. 9 A.L.R.4th 1041.

Right of accused, in state criminal trial to

insist, over objection of prosecution or court, upon trial by court without a jury. 37 A.L.R.4th 304.

Jury trial waiver as binding on later state civil trial. 48 A.L.R.4th 747.

Examination and challenge of state case jurors on basis of attitudes toward homosexuality. 80 A.L.R.5th 469.

Voir dire exclusions of men from state trial

jury or jury panel — *Post-J.E.B. v. Alabama ex rel T.B.*, 511 U.S. 127, cases. 88 A.L.R.5th 67.

Right to jury trial in child neglect, child abuse, or termination of parental rights proceedings. 102 A.L.R.5th 227.

Right to jury trial on issue of damages in copyright infringement actions under 17 U.S.C.A. § 504. 163 A.L.R. Fed. 467.

§ 8. Prosecutions only by indictment or information. — No person shall be held to answer for any felony or criminal offense of any grade, unless on presentment or indictment of a grand jury or on information of the public prosecutor, after a commitment by a magistrate, except in cases of impeachment, in cases cognizable by probate courts or by justices of the peace, and in cases arising in the militia when in actual service in time of war or public danger; provided, that a grand jury may be summoned upon the order of the district court in the manner provided by law, and provided further, that after a charge has been ignored by a grand jury, no person shall be held to answer, or for trial therefor, upon information of the public prosecutor.

Cross ref. Compare this section of the Constitution with Idaho Code, § 19-1308, requiring preliminary examination before filing of information, except in case of fugitives from justice.

Comp. provisions: Cal. Art. 1, § 14.

Utah. Art. 1, § 13.

Cited in: *State v. Farris*, 5 Idaho 666, 51 P. 772 (1897); *State v. Carlson*, 23 Idaho 545, 130 P. 463 (1913); *Carey v. State*, 91 Idaho 706, 429 P.2d 836 (1967); *State v. Dalling*, 128 Idaho 203, 911 P.2d 1115 (1996); *State v. Izzard*, 136 Idaho 124, 29 P.3d 961 (Ct. App. 2001).

ANALYSIS

Grand jury or preliminary hearing.

— Decision not to call.

— Order.

Indictment or information.

— Amendments.

Jurisdiction of inferior courts.

Misdemeanor.

Persistent violator law.

Post-indictment hearing.

Preliminary examination.

— Waiver.

Provisions self-executing.

Revocation of permit.

Grand Jury or Preliminary Hearing.

The prosecutor can use either a grand jury proceeding or a preliminary hearing before an impartial magistrate to initiate criminal proceedings. *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987).

— Decision Not to Call.

The decision not to call a grand jury falls within the judge's discretionary authority; such a decision will not be disturbed unless an abuse of discretion has occurred. *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572, 716 P.2d 1344 (Ct. App. 1986).

The district court did not abuse its discretion in denying the defendant's request for a grand jury where the court found the defendant's claims against the state tax commission to be without merit and the defendant did not make any showing that he was barred from the alternative remedy of presenting his evidence to the prosecutor or to the state attorney general's office. *Parsons v. Idaho State Tax Comm'n*, 110 Idaho 572, 716 P.2d 1344 (Ct. App. 1986).

— Order.

This section is not infringed by § 2-501, which authorizes district judge, sitting in chambers, to make an order for calling of grand jury. *State v. Barber*, 13 Idaho 65, 88 P. 418 (1907).

Indictment or Information.

Informations are of dignity with indictments, subject only to limitations contained in this section, that defendant may be accused only by information after commitment by magistrate and that "after a charge has been ignored by a grand jury, no person shall be held to answer, or for trial therefor, upon information of the public prosecutor." In re Winn, 28 Idaho 461, 154 P. 497 (1916).

An information may be filed while the grand jury is in session. In re Winn, 28 Idaho 461, 154 P. 497 (1916).

Failure of grand jury to indict is not acquittal within meaning of this section. *State v. Wilson*, 41 Idaho 598, 242 P. 787 (1925).

Since nothing in the constitution prohibits the use of information procedure as opposed to the indictment by a grand jury while a grand jury is in session, appellant's contention that while a grand jury was in session no prosecutions for felony could be instituted except by first submitting them to the grand jury for action was without merit. *State v. Bailey*, 94 Idaho 285, 486 P.2d 998 (1971).

Magistrate's contention that Idaho's Constitution, Art. 1, § 8 requires prosecution of criminal actions in all instances, except impeachment and military incidents, to be held either by grand jury indictment or by information of prosecuting attorney after commitment by magistrate following abolition of the justices of the peace and probate courts was erroneous, because the phrase "cases cognizable by probate courts or by justices of the peace" was used to distinguish between criminal cases requiring prosecution by indictment or information and those to be tried without such preliminary screening. *Collins v. Crowley*, 94 Idaho 891, 499 P.2d 1247 (1972).

To show discriminatory intent by the prosecutor in respect to the charging selection, a defendant must show a deliberate and intentional plan of discrimination against him or her, based on some unjustifiable or arbitrary classification. *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987).

A prosecutor may proceed by either indictment or information without violating the equal protection clause of Const., art. 1, § 2. *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987).

An indictment by a grand jury does not afford the accused a right to a preliminary hearing. *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987).

A proceeding initiated by information entitles the accused the right to a preliminary hearing before an impartial magistrate to determine whether a crime has been committed and whether there is probable cause to believe that the accused committed it. *State v. Edmonson*, 113 Idaho 230, 743 P.2d 459 (1987).

Where state filed a motion to dismiss the pending criminal complaint on the grounds that the defendant had been indicted by the grand jury, this section supported state's decision to proceed by indictment rather than information and defendant's argument that he was improperly deprived of a preliminary hearing was without merit. *State v. Martinez*, 128 Idaho 104, 910 P.2d 776 (Ct. App. 1995).

—Amendments.

Amendment to information did not have the effect of charging a greater or different

offense such that defendant, who was held for trial without a preliminary hearing, was denied his constitutional and statutory right to such hearing. *State v. O'Neill*, 118 Idaho 244, 796 P.2d 121 (1990).

Where court's instruction went beyond creating a "mere variance" between the conduct alleged in the information (lewd conduct with a minor) and the conduct proved at trial (sexual abuse of a minor), the instruction amounted to a constructive amendment of the information. *State v. Colwell*, 124 Idaho 560, 861 P.2d 1225 (Ct. App. 1993).

Jurisdiction of Inferior Courts.

Under this section and the statutes, magistrates are given jurisdiction to hold preliminary examinations of such criminal cases as are not cognizable in justice and probate courts, and their jurisdiction to hold preliminary examinations is limited to crimes only that are beyond original jurisdiction of justice and probate courts. *State v. Raaf*, 16 Idaho 411, 101 P. 747 (1909).

This section places limitation upon power of legislature in conferring criminal jurisdiction on probate courts or justices of peace. *Fox v. Flynn*, 27 Idaho 580, 150 P. 44 (1915).

Jurisdiction of justices of peace and probate courts is limited to such cases as are by statute made cognizable by such courts. *State v. Frederic*, 28 Idaho 709, 155 P. 977 (1916).

Legislature can not confer upon municipalities authority to prohibit or punish indictable misdemeanors. *State v. Frederic*, 28 Idaho 709, 155 P. 977 (1916).

Invalidity of section of statute providing proceedings thereunder "shall be brought in district court," though designated misdemeanors, rendered entire act invalid. *State v. Wilmot*, 51 Idaho 233, 4 P.2d 363 (1931).

Misdemeanor.

A person accused of a misdemeanor may be arraigned without being offered a preliminary examination or having presentment of charges to a grand jury. *Collins v. Crowley*, 94 Idaho 891, 499 P.2d 1247 (1972).

To the extent that a person charged with a criminal offense of lesser degree than a felony was not entitled to a preliminary examination, there was no constitutional infirmity in allowing prosecution of the indictable misdemeanor of illegal possession of a controlled substance to proceed to trial on the basis of a complaint charging commission of the crime without the necessity of proceeding by grand jury indictment or of affording accused a preliminary hearing. *Gibbs v. Shaud*, 98 Idaho 37, 557 P.2d 631 (1976).

Where defendant was found guilty by a jury in the magistrate division of operating a vehicle without a valid driver's license, was without proof of liability insurance and was with an expired vehicle registration, personal

jurisdiction was not lacking even though the criminal prosecution was not initiated through indictment by a grand jury; this section, providing for presentment or indictment by a grand jury, does not prohibit prosecution of misdemeanor offenses by filing a complaint. *State v. Simmons*, 115 Idaho 877, 771 P.2d 541 (Ct. App. 1989).

Persistent Violator Law.

An indictment or information under the persistent violator law should be drawn in two separable parts so that the trial for the alleged crime for which the accused is to be tried can proceed in every respect as if there were no allegations of previous convictions. *State v. Johnson*, 86 Idaho 51, 383 P.2d 326 (1963).

Post-Indictment Hearing.

A defendant who had been indicted by a grand jury did not have a right to a post-indictment hearing. *State v. Odiaga*, 125 Idaho 384, 871 P.2d 801, cert. denied, 513 U.S. 952, 115 S. Ct. 369, 130 L. Ed. 2d 321 (1994).

Preliminary Examination.

District court has no jurisdiction to try any person for an offense by information until statute regarding preliminary examinations has been complied with. *State v. Braithwaite*, 3 Idaho 119, 27 P. 731 (1891).

Under this section, prosecuting attorney has no power to file an information against accused person until after such person has been committed by a magistrate, and he can file his information for offense only for which accused was committed. *State v. McGreevey*, 17 Idaho 453, 105 P. 1047 (1909).

District court has no jurisdiction to try person charged with misdemeanor for which penalty is prescribed in excess of that which justices' and probate courts have jurisdiction to impose, unless accused has been first accorded a preliminary examination or has been indicted by grand jury. *State v. West*, 20 Idaho 387, 118 P. 773 (1911).

Fact of there having been preliminary examination need not be set forth in information charging murder. *State v. McClurg*, 50 Idaho 762, 300 P. 898 (1931).

One charged in an information with arson in the first degree and with being a persistent violator after a preliminary hearing on the charge of arson was not entitled to an additional preliminary hearing on the charge of being a persistent violator, the latter not being an offense but referring only to the status of the violator for the purpose of determining punishment. *State v. Dunn*, 91 Idaho 870, 434 P.2d 88 (1967).

A district court may not try a person based on information which does not comply with the proper procedures regarding preliminary

examinations. *State v. Ruddell*, 97 Idaho 436, 546 P.2d 391 (1976).

—Waiver.

Right of preliminary examination is right given to every one accused of crime, but this right may be waived unless prohibited by law. *State v. Larkins*, 5 Idaho 200, 47 P. 945 (1897), overruled on other grounds, *State v. White*, 93 Idaho 153, 456 P.2d 797 (1969).

A defendant who waived a preliminary hearing on a charge of "aggravated assault," although the facts alleged in the information constituted aggravated battery, was not entitled to a new preliminary hearing on a charge of "aggravated battery" after the information was amended by changing the caption from "aggravated assault" to "aggravated battery" without changing the allegations of the complaint. *State v. McKeehan*, 91 Idaho 808, 430 P.2d 886 (1967).

The right to a preliminary hearing can be waived, and a waiver made voluntarily, knowingly and intelligently is effective even in the absence of advice of counsel. *Noel v. State*, 113 Idaho 92, 741 P.2d 728 (Ct. App. 1987).

The defendant effectively waived compliance with the preliminary hearing requirement, where the district judge asked the defendant if he gave up the right to a preliminary hearing, the defendant indicated he had, and this question was preceded by an explanation of the right to a preliminary hearing. *Noel v. State*, 113 Idaho 92, 741 P.2d 728 (Ct. App. 1987).

Provisions Self-Executing.

This section is self-executing, is complete in itself, and needs no further legislation to put it into effect. *Davis v. Burke*, 179 U.S. 399, 21 S. Ct. 210, 45 L. Ed. 249 (1900).

Revocation of Permit.

The proceedings provided by § 23-1037 are not criminal in nature as contemplated by this section since the hearing before the commissioner of law enforcement on the suspension or revocation of a licensee's beer permit was an administrative proceeding. *Blue Note, Inc. v. Hopper*, 85 Idaho 152, 377 P.2d 373 (1962).

Opinions of Attorney General. It is constitutional under the First and Fourteenth Amendments of the United States Constitution, Const., article I, §§ 1 and 13, and this section to restrict the use of the word "accountant" and other labels or titles to individuals who have been certified and licensed by the state Board of Accountancy, as required by § 54-201. OAG 86-1.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 260; Vol. II, p. 1589.

41 Am. Jur. 2d, Indictments and Informations, § 4.

16C C.J.S., Constitutional Law, §§ 1016-1025.

22 C.J.S., Criminal Law, § 324 et seq.

42 C.J.S., Indictments and Informations, §§ 2, 28, 60.

§ 9. Freedom of speech. — Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that liberty.

Comp. provisions: Cal. Art. 1, § 2.

Mont. Art. 2, § 7.

Ore. Art. 1, § 8.

Utah. Art. 1, § 15.

Cited in: State v. Newman, 108 Idaho 5, 696 P.2d 856 (1985); Gardner v. Evans, 110 Idaho 925, 719 P.2d 1185 (1986).

ANALYSIS

Abuse of freedom of speech or press.

Assertion of fact.

Candidates.

Direct primary law.

Disclosure of confidential source.

—Production of videotape.

Fighting words.

Prisoners.

Private employers.

Abuse of Freedom of Speech or Press.

"Liberty of the press" is not guaranteed by the Constitution against publication of deliberate falsehood and misrepresentation in regard to decisions of courts, even though publishers may think that public and political interests would be subserved by such falsehood and misrepresentation. Public press has no more license or right to publish falsehood and defamation than has a private individual. Liberty of the press is only liberty which every man has to utter his sentiments, and can be enjoyed only in subjection to that precept both of law and morals, "So use your own in order that you may not injure another's." McDougall v. Sheridan, 23 Idaho 191, 128 P. 954 (1913).

The constitutional guaranty of freedom of speech is not encroached upon by affording of appropriate remedies for the abuse of the privilege. Robison v. Hotel & Restaurant Employees Local No. 782, 35 Idaho 418, 207 P. 132, 27 A.L.R. 642 (1922).

Labor union was not deprived of freedom of speech, contrary to this section where it was enjoined from picketing and displaying sign which announced that plaintiff's store was unfair to labor union where the employees of the store did not belong to the union, did not participate in picket line, and were not involved in any labor dispute with the plaintiff. J.J. Newberry Co. v. Retail Clerks Int'l Ass'n, 78 Idaho 85, 298 P.2d 375 (1956), rev'd, 352 U.S. 987, 77 S. Ct. 386, 1 L. Ed. 2d 367 (1957).

The right to speech and assembly does not require a county to provide a forum for a

discharged county employee to speak or to assemble an audience; therefore, a refusal of the county commissioners to hold a public hearing and to release their findings of fact to the public regarding the discharge would not violate the employee's freedom of speech and assembly protected by this section and article I, § 10 of the Idaho Constitution. Nelson v. Boundary County, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).

Assertion of Fact.

Because statements of county attorney insinuated that he was privy to undisclosed facts not revealed, his comments went beyond the realm of pure opinion and could be treated for constitutional purposes as assertions of fact and because such statements implied that a judge had based his decision on a county funding issue on irrelevant and improper considerations, they impugned the judge's integrity in violation of Idaho Rules of Professional Conduct and required public reprimand of attorney. Idaho State Bar v. Topp, 129 Idaho 414, 925 P.2d 1113 (1996), cert. denied, 520 U.S. 1155, 117 S. Ct. 1334, 137 L. Ed. 2d 493 (1997).

Candidates.

This section does not allow the state to restrict a candidate's right to speak freely, unless there is a flagrant abuse of that right. Simpson v. Cenarrusa, 130 Idaho 609, 944 P.2d 1372 (1997).

Proposition's pledge requiring candidate to promise to support term limit amendment or face ballot legend for not speaking was an unconstitutional attempt by the state to govern political speech without showing any flagrant abuse of the right by compelling candidates to take a stance on the proposed amendment. Simpson v. Cenarrusa, 130 Idaho 609, 944 P.2d 1372 (1997).

Direct Primary Law.

Provisions of primary election law in regard to expenditures of person in aiding or promoting his nomination for an office in no manner conflict with this provision of the Constitution. That law does not attempt to prevent a candidate from freely speaking, writing, and publishing his views on all subjects. Adams v. Lansdon, 18 Idaho 483, 110 P. 280 (1910).

Disclosure of Confidential Source.

The constitutional guarantee of freedom of speech and press does not give a newsman

testifying in a civil suit a privilege against disclosure of the identity of a confidential source. *Caldero v. Tribune Publishing Co.*, 98 Idaho 288, 562 P.2d 791, cert. denied, 434 U.S. 930, 98 S. Ct. 418, 54 L. Ed. 2d 291 (1977).

Because there is a compelling and legitimate governmental interest in assuring the efficacy of the writ of habeas corpus, there is no qualified newsman's privilege not to disclose sources beyond the usual inquiry concerning relevance and materiality of the information sought, in a habeas corpus proceeding in which a journalist is a witness; furthermore, the obligation to attend and to give testimony in a habeas corpus proceeding wherein liberty interests are determined is at least as compelling as the duty to appear before a grand jury. *Marks v. Vehlow*, 105 Idaho 560, 671 P.2d 473 (1983). But see, *State v. Kiss*, 108 Idaho 418, 700 P.2d 40 (1985).

Where a child was sought in habeas corpus proceedings and journalist who had information concerning child's whereabouts refused to answer questions on the subject, the interest of the journalist in concealing her confidential sources and information must yield to the due process rights of the child when the testimony sought was material and relevant; the journalist's interest was subordinate to the interest of the child. *Marks v. Vehlow*, 105 Idaho 560, 671 P.2d 473 (1983). But see, *State v. Kiss*, 108 Idaho 418, 700 P.2d 40 (1985).

—Production of Videotape.

Denial of motion to quash a subpoena duces tecum issued to obtain videotape taken by television reporter at scene of fatal accident for use in the criminal prosecution of a newspaper reporter was affirmed because there was no confidential information, it was shot at a public event readily viewable to anyone, and there was no realistic threat of restraint or impingement on the free flow of information to the press and public by requiring production of the videotape. *State v. Salsbury*, 129 Idaho 307, 924 P.2d 208 (1996).

Fighting Words.

Defendant's loud, profane outburst, directed at a 13-year-old friend of her daughter, constituted "fighting words" and was not constitutionally protected. *State v. Hammersley*, 134 Idaho 816, 10 P.3d 1285 (2000).

Prisoners.

The denial of inmate's request to attempt to secure a publisher for his illustrated poetry was constitutional because the regulatory prohibition on inmate business activity is reasonably related to the legitimate prison security interests of the Idaho Department of Corrections. *Freeman v. State*, 134 Idaho 481, 4 P.3d 1132 (Ct. App. 2000).

Private Employers.

Employee does not have a cause of action against a private sector employer who termi-

nates an employee because of the exercise of the employee's constitutional right of free speech pursuant to Idaho Const. art. I, § 9; thus, the trial court properly granted the private employer summary judgment under Idaho R. Civ. P. 56(c) in connection with the employee's wrongful termination claim that alleged discharge based on an exercise of the employee's free speech rights. *Edmondson v. Shearer Lumber Prods.*, — Idaho —, 75 P.3d 733 (2003), cert. denied, — U.S. —, 124 S. Ct. 1426, 158 L. Ed. 2d 88 (2004).

Opinions of Attorney General. The independent state constitutional guarantees of equal protection of the law and freedom of speech are violated by the Idaho Citizens Alliance Initiative (proposed title 67, chapter 80) which would: prohibit special rights for homosexuals and same-sex marriages; restrict certain speech in public schools and expenditure of public funds and access to library materials with regard to homosexuality; and provide that no agency, department or political subdivision could forbid the consideration of private sexual behaviors as a non-job factor in the hiring of public employees. OAG 93-11.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 279; Vol. II, pp. 1594, 1636.

16A Am. Jur. 2d, Constitutional Law, §§ 496-525.

16B C.J.S., Constitutional Law, §§ 539-611.

Municipal regulation requiring license or permit for solicitation of magazine subscriptions as infringement of freedom of speech or of the press. 9 A.L.R.2d 731, 738.

Oath of allegiance, governmental requirement of. 18 A.L.R.2d 309.

Constitutional right to freedom of speech as violated by conviction based on failure or refusal to obey police officer's order to move on, on street. 65 A.L.R.2d 1152.

Price, statute or ordinance requiring or prohibiting posting or other publication of price of commodity or services. 89 A.L.R.2d 901; 80 A.L.R.3d 740.

Modern concept of obscenity. 5 A.L.R.3d 1158.

Validity and construction of state court's pretrial order precluding publicity or comment about pending case by counsel, parties, or witnesses. 33 A.L.R.3d 1041.

Peaceful picketing of private residence. 42 A.L.R.3d 1353.

Propriety of conditioning probation or suspended sentence on defendant's refraining from political activity, protest, or the like. 45 A.L.R.3d 1022.

Right of accused to have press or other media representatives excluded from criminal trial. 49 A.L.R.3d 1007.

Receipt of public documents taken by another without authorization as receipt of stolen property. 57 A.L.R.3d 1211.

Consumer picketing to protest products, prices, or services. 62 A.L.R.3d 227.

Propriety of exclusion of press or other media representatives from civil trial. 39 A.L.R.5th 103.

Validity and construction of statute or ordinance restricting outdoor rate advertising by motels, motor courts, and the like. 80 A.L.R.3d 740.

Propriety of publishing identity of sexual

assault victim. 40 A.L.R.5th 787.

State regulation of the giving or making of political contributions or expenditures by private individuals. 94 A.L.R.3d 944.

First Amendment protection afforded to commercial and home video games. 106 A.L.R.5th 337.

First amendment challenges to display of religious symbols on public property. 107 A.L.R.5th 1.

Protection of commercial speech under first amendment — Supreme Court cases. 164 A.L.R. Fed. 1.

§ 10. Right of assembly. — The people shall have the right to assemble in a peaceable manner, to consult for their common good; to instruct their representatives, and to petition the legislature for the redress of grievances.

Comp. provisions: Cal. Art. 1, § 3.

Mont. Art. 2, § 6.

Ore. Art. 1, § 26.

Wyo. Art. 1, § 21.

Cited in: *Holloway v. Palmer*, 105 Idaho 220, 668 P.2d 96 (1983); *Edmondson v. Shearer Lumber Prods.*, — Idaho —, 75 P.3d 733 (2003), cert. denied, — U.S. —, 124 S. Ct. 1426, 158 L. Ed. 2d 88 (2004).

ANALYSIS

Deprivation of right.

Newspaper report of assembly.

Voters.

Deprivation of Right.

Labor union was not deprived of right of assembly, contrary to this section, where it was enjoined from picketing and displaying sign which announced that plaintiff's store was unfair to labor union where the employees of the store did not belong to the union, did not participate in picket line, and were not involved in any labor dispute with the plaintiff. *J.J. Newberry Co. v. Retail Clerks Int'l Ass'n*, 78 Idaho 85, 298 P.2d 375 (1956), rev'd, 352 U.S. 987, 77 S. Ct. 386, 1 L. Ed. 2d 367 (1957).

The assembly of defendants for the purpose of threatening other persons with assault and battery after an automobile chase of such persons by defendants across a state line and through the city streets was not an assembly in a peaceable manner within the protection of this section. *Lewiston v. Frary*, 91 Idaho 322, 420 P.2d 805 (1966).

The right to speech and assembly does not require a county to provide a forum for a discharged county employee to speak or to assemble an audience; therefore, a refusal of the county commissioners to hold a public hearing and to release their findings of fact to the public regarding the discharge would not

violate the employee's freedom of speech and assembly protected by article I, § 9 and this section of the Idaho Constitution. *Nelson v. Boundary County*, 109 Idaho 205, 706 P.2d 94 (Ct. App. 1985).

Newspaper Report of Assembly.

Newspapers had a conditional privilege to publish with accuracy the proceedings of a public gathering called for the purpose of inducing a district judge to call a grand jury. *Borg v. Boas*, 231 F.2d 788 (9th Cir. 1956).

Voters.

This section enables voters to instruct the Idaho members of congress and legislators. *Simpson v. Cenarrusa*, 130 Idaho 609, 944 P.2d 1372 (1997).

Opinions of Attorney General. The independent state constitutional guarantees of equal protection of the law and freedom of speech are violated by the Idaho Citizens Alliance Initiative (proposed title 67, chapter 80) which would: prohibit special rights for homosexuals and same-sex marriages; restrict certain speech in public schools and expenditure of public funds and access to library materials with regard to homosexuality; and provide that no agency, department or political subdivision could forbid the consideration of private sexual behaviors as a non-job factor in the hiring of public employees. OAG 93-11.

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, p. 281; Vol. II, p. 1595.

16B Am. Jur. 2d, *Constitutional Law*, §§ 612-618.

16 C.J.S. *Constitutional Law*, § 214.

Constitutional questions involved in conviction based on failure or refusal to obey police officer's order to move on, on street. 65 A.L.R.2d 1152.

Participation of student in demonstration on or near campus as warranting imposition of criminal liability for breach of peace, disorderly conduct, trespass, unlawful assembly, or

similar offense. 32 A.L.R.3d 551.

Peaceful picketing of private residence. 42 A.L.R.3d 1353.

§ 11. Right to keep and bear arms. — The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person nor prevent passage of legislation providing minimum sentences for crimes committed while in possession of a firearm, nor prevent the passage of legislation providing penalties for the possession of firearms by a convicted felon, nor prevent the passage of any legislation punishing the use of a firearm. No law shall impose licensure, registration or special taxation on the ownership or possession of firearms or ammunition. Nor shall any law permit the confiscation of firearms, except those actually used in the commission of a felony.

Compiler's notes. As originally adopted, this section read as follows:

“§ 11. **Right to bear arms.** — The people have the right to bear arms for their security and defense; but the legislature shall regulate the exercise of this right by law.” This section was amended as proposed by S.J.R. No. 116 (S.L. 1978, p. 1031) and ratified at the general election on November 7, 1978, to read as it now appears.

Cross ref. Fish and game law, restrictions on carrying uncased shotguns and rifles, § 36-401.

Comp. provisions: Mont. Art. 2, § 12.

Ore. Art. 1, § 27.

Utah. Art. 1, § 6.

Wyo. Art. 1, § 24.

Sec. to sec. ref. This section is referred to in § 18-8104.

Cited in: Fall Creek Sheep Co. v. Walton, 24 Idaho 760, 136 P. 438, 1915C Ann. Cas. 1252 (1913).

ANALYSIS

Legislative regulation.

Municipal regulations.

Use of firearm in crime.

Legislative Regulation.

Legislature may regulate exercise of right to carry arms but may not prohibit it, and statute which attempts to prohibit, in any manner, carrying of arms in cities is void. In re Brickey, 8 Idaho 597, 70 P. 609, 101 Am. St. R. 215, 1 Ann. Cas. 55 (1902).

While the legislature may regulate the right to bear arms by prescribing the kind or character of arms that may be carried, kept or used and prohibit the carrying of concealed weapons, under this section, the right to bear arms may not be denied by it. State v. Woodward, 58 Idaho 385, 74 P.2d 92 (1937).

This section, in effect, guarantees the peo-

ple of the state the right to bear arms for their security and defense; but it also provides that the legislature shall regulate the exercise of such right. State v. Hart, 66 Idaho 217, 157 P.2d 72 (1945).

Municipal Regulations.

The right to prohibit carrying of concealed weapons falls within the police power of a municipality and an ordinance enforcing same is constitutional. State v. Hart, 66 Idaho 217, 157 P.2d 72 (1945).

Use of Firearm in Crime.

Section 19-2520, which imposes an additional prison term for committing certain crimes while using a firearm, does not unconstitutionally violate the right to bear arms, as embodied in this section, nor does it impermissibly infringe upon the constitutional separation of legislative and judicial functions, embodied in Const. Art. II, § 1. State v. Grob, 107 Idaho 496, 690 P.2d 951 (Ct. App. 1984).

Opinions of Attorney General. Because the intent of § 36-401 is only to punish a use of firearms by unlicensed hunters, it has not been made unconstitutional by the 1978 amendment of this section; so long as a charge under § 36-401 presents proof of both a criminal act (being unlicensed and in possession of an uncased firearm while in the fields and forests of the state), and criminal intent (intent to engage in hunting), the law is constitutional and enforceable. OAG 86-5.

There is nothing in the United States or Idaho constitutions that grants a person a constitutional right to carry a concealed weapon. OAG 90-3.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 281; Vol. II, p. 1595.

79 Am. Jur. 2d, Weapons and Firearms, §§ 4, 5.

135, 645 P.2d 369 (1982); *State v. Russell*, 103 Idaho 699, 652 P.2d 203 (1982); *Langmeyer v. State*, 104 Idaho 53, 656 P.2d 114 (1982); *Flores v. State*, 104 Idaho 191, 657 P.2d 488 (Ct. App. 1983); *Tarbox v. Tax Comm'n*, 107 Idaho 957, 695 P.2d 342 (1984); *State v. Newman*, 108 Idaho 5, 696 P.2d 856 (1985); *State v. Russell*, 108 Idaho 58, 696 P.2d 909 (1985); *State v. Castillo*, 108 Idaho 205, 697 P.2d 1219 (Ct. App. 1985); *Schwartzmiller v. State*, 108 Idaho 329, 699 P.2d 429 (Ct. App. 1985); *State v. Ankney*, 109 Idaho 1, 704 P.2d 333 (1985); *Sprague v. City of Burley*, 109 Idaho 656, 710 P.2d 566 (1985); *State v. Brooks*, 109 Idaho 726, 710 P.2d 636 (Ct. App. 1985); *Cambridge Tel. Co. v. Pine Tel. Sys.*, 109 Idaho 875, 712 P.2d 576 (1985); *Herrera v. Conner*, 111 Idaho 1012, 729 P.2d 1075 (Ct. App. 1986); *State v. Chilton*, 112 Idaho 823, 736 P.2d 1277 (1987); *State v. Stuart*, 113 Idaho 494, 745 P.2d 1115 (Ct. App. 1987); *State v. Currington*, 113 Idaho 538, 746 P.2d 997 (Ct. App. 1987); *Sandpoint Convalescent Servs., Inc. v. Idaho Dep't of Health & Welfare*, 114 Idaho 281, 756 P.2d 398 (1988); *Aragon v. State*, 114 Idaho 758, 760 P.2d 1174 (1988); *State v. Knauff*, 115 Idaho 74, 764 P.2d 441 (Ct. App. 1988); *State v. Grinolds*, 121 Idaho 673, 827 P.2d 686 (1992); *State v. McConnell*, 125 Idaho 907, 876 P.2d 605 (Ct. App. 1994); *State v. DeGrat*, 128 Idaho 352, 913 P.2d 568 (1996); *State v. Mathews*, 129 Idaho 865, 934 P.2d 931 (1997); *State v. McNew*, 131 Idaho 268, 954 P.2d 686 (Ct. App. 1998); *State v. Castro*, 131 Idaho 274, 954 P.2d 692 (Ct. App. 1998); *Cochran v. State*, 133 Idaho 205, 984 P.2d 128 (Ct. App. 1999); *Miller v. State*, 135 Idaho 261, 16 P.3d 937 (Ct. App. 2000); *Butler v. Elle*, 281 F.3d 1014 (9th Cir. 2002).

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Alcohol Concentration Test.

An alcohol concentration test is outside the scope of a "criminal prosecution" for the purpose of this section. *Triplett v. State*, 117 Idaho 193, 804 P.2d 922 (Ct. App. 1991).

Aliens.

An alien comes clearly within the provisions of this section and the 14th Amendment, § 1, of the Federal Constitution. *Ex parte Case*, 20 Idaho 128, 116 P. 1037 (1911).

Court Ordered Lineup.

A court may order a lineup in appropriate circumstances, and it should do so on request where the reliability of a "showup" identification is genuinely in doubt. *State v. Best*, 117 Idaho 652, 791 P.2d 33 (Ct. App. 1990).

Criminal Charges.

This section does not create a per se prohibition against refile of criminal charges after the charges have first been dismissed with approval of the court and without prejudice unless such dismissal and refile is done for the purpose of harassment, delay or forum-shopping. *Stockwell v. State*, 98 Idaho 797, 573 P.2d 116 (1977).

Death Penalty.

The imposition of the death penalty with no participation by the jury in the sentencing process does not violate the Idaho Constitution. *State v. Lankford*, 116 Idaho 860, 781 P.2d 197 (1989), cert. denied, 497 U.S. 1032, 110 S. Ct. 3295, 111 L. Ed. 2d 803 (1990).

Section 19-2719 provides an adequate process to prevent erroneous results and to ensure that death sentences are not carried out so as to arbitrarily deprive a defendant of his life. *State v. Rhoades*, 120 Idaho 795, 820 P.2d 665 (1991), cert. denied, 504 U.S. 987, 112 S. Ct. 2970, 119 L. Ed. 2d 589 (1992).

The United States Supreme Court has imposed many procedural protections for capital cases, however, these cases do not go so far as to alter the types of evidence or establish a minimum degree of reliability of evidence that is admissible during the fact finding phase of a potential capital case and the prosecution is not required to prove the crime by any higher standard than the "beyond a reasonable doubt" standard used in other criminal cases because admission of evidence is not governed by any separate rules applicable only to capital cases. *State v. Rhoades*, 120 Idaho 795, 820 P.2d 665 (1991), cert. denied, 504 U.S. 987, 112 S. Ct. 2970, 119 L. Ed. 2d 589 (1992).

Disciplinary Decisions by Correctional Officials.

It is not a heavy burden to require correctional officials to state in their disciplinary decisions the evidence upon which they relied, and the Supreme Court of Idaho will look only to the written findings made at the time the discipline was ordered to determine if there was some evidence to support the decision. *Cootz v. State*, 117 Idaho 38, 785 P.2d 163 (1989).

Double Jeopardy.

Statute which makes it an offense to escape from prison does not place person so offending twice in jeopardy for same offense. *In re Mallon*, 16 Idaho 737, 102 P. 374, 22 L.R.A. (n.s.) 1123 (1909).

Where defendant's plea of once in jeopardy is not disposed of as an issue of fact triable to jury, his conviction is without due process of law and can not be sustained. *State v. Crawford*, 32 Idaho 165, 179 P. 511 (1919).

An assaulted person's ensuing death is a sufficient additional act or omission to prevent the plea of previous jeopardy on a prosecution for assault and battery before his death from barring subsequent charge, such as second degree murder, and included offense of voluntary manslaughter. *State v. Randolph*, 61 Idaho 456, 102 P.2d 913 (1940).

Plea of guilty and punishment thereunder as for assault and battery is no bar thereafter on the death of the victim to a prosecution for homicide. *State v. Randolph*, 61 Idaho 456, 102 P.2d 913 (1940).

An acquittal on a charge of murder in the first degree while in the commission of a robbery is not a bar to a subsequent prosecution for the robbery. *State v. Hall*, 86 Idaho 63, 383 P.2d 602 (1963).

The constitutional guaranty against twice putting a person in jeopardy for the same offense does not apply to the serving of a sentence but only to being put on trial a second time for the same offense. *Franklin v. State*, 87 Idaho 291, 392 P.2d 552 (1964).

There is no double jeopardy in having been retried for the same offense after a declaration of mistrial, particularly where the dismissal was in the interest of defendant, although the trial court acted sua sponte and without the defendant's motion or consent. *Lewis v. Anderson*, 94 Idaho 254, 486 P.2d 265 (1971).

Decree of magistrate finding jurisdiction over child under § 16-1803 (repealed and reenacted) exposes child to the possible loss of liberty upon which jeopardy attaches. *State v. Gibbs*, 94 Idaho 908, 500 P.2d 209 (1972).

Where defendant was convicted a second time for being a persistent violator and the same prior conviction was used to sustain the second persistent violator proceeding as was used in the first persistent violator proceeding there was no double jeopardy, since being a persistent violator is not a particular offense, but merely an enhancement of punishment. *State v. Salazar*, 95 Idaho 650, 516 P.2d 707 (1973).

Guilty plea to driving while intoxicated after pleading guilty to driving with a suspended license at the same time was not double jeopardy as they are separate offenses and one could happen in the absence of the other. *State v. Mooneyham*, 96 Idaho 145, 525 P.2d 340 (1974).

Where defendant had been convicted, on guilty plea, of assault with intent to murder, later prosecution for first-degree murder after the death of the assault victim was not barred by the prior conviction since the ensuing death was a sufficient additional act to prevent a plea of previous jeopardy. *State v. Brusseau*, 96 Idaho 558, 532 P.2d 563 (1975).

Dismissal of charges of rape and kidnapping on defendants' motion for acquittal on the ground that the state's evidence was insufficient to sustain a conviction, though erroneously granted, constituted a factual determination of innocence favorable to the defendants who were thereby protected from retrial on either of the charges under double jeopardy considerations. *State v. Lewis*, 96 Idaho 743, 536 P.2d 738 (1975).

While something more than mere silence on the defendant's part must be shown to establish his consent to being placed in double jeopardy, the consent need not be expressed; rather, it may be implied from a totality of the circumstances. *State v. Werneth*, 101 Idaho 241, 611 P.2d 1026 (1980), cert. denied, 449 U.S. 1129, 101 S. Ct. 951, 67 L. Ed. 2d 118 (1981).

Where the defendant himself moves to dis-

charge the jury, or where he consents to such a move made by the court or the prosecution, he cannot claim double jeopardy if he is thereafter retried for the same offense. *State v. Werneth*, 101 Idaho 241, 611 P.2d 1026 (1980), cert. denied, 449 U.S. 1129, 101 S. Ct. 951, 67 L. Ed. 2d 118 (1981).

The test for determining whether one offense is a lesser included of another is the same regardless of whether the determination is being made to decide if a requested instruction is proper or whether the determination is being made for the purposes of deciding if a defendant can be convicted of both offenses or only one under the double jeopardy clause. *State v. Thompson*, 101 Idaho 430, 614 P.2d 970 (1980).

Where there was only one event, defendant's shooting at victim's door, on which charges could be based, the charge of assault with a deadly weapon was a lesser included offense in a charge of attempted robbery such as to preclude conviction of both charges under the double jeopardy of the Fifth Amendment of the United States Constitution and under the Idaho Constitution. *State v. Thompson*, 101 Idaho 430, 614 P.2d 970 (1980).

Since the double jeopardy clause of this section and the Fifth Amendment of the United States Constitution preclude a second trial once a reviewing court has determined that the evidence submitted at trial was insufficient to sustain a guilty plea, the holding of the Supreme Court of Idaho abolishing the requirement of corroboration in sex crime cases could only be applied prospectively; consequently a conviction obtained prior to the change in the rule which was not based on sufficient corroborating evidence must be reversed. *State v. Byers*, 102 Idaho 159, 627 P.2d 788 (1981).

The double jeopardy clauses of the fifth amendment, which apply to the states through the fourteenth amendment, and of the Idaho Constitution were intended to protect defendants against constant retrials by a state with limitless resources. *State v. Sharp*, 104 Idaho 691, 662 P.2d 1135 (1983).

A defendant who moves for, or consents to a mistrial may raise a bar to retrial if the conduct that induced the mistrial motion was prosecutorial or judicial conduct designed specifically to provoke the defendant into calling for a mistrial. *State v. Sharp*, 104 Idaho 691, 662 P.2d 1135 (1983).

Jeopardy attaches when a jury is sworn. *State v. Sharp*, 104 Idaho 691, 662 P.2d 1135 (1983).

Where a trial is terminated over the objections of a defendant, a prosecutor must shoulder a heavy burden to allow for a retrial of the defendant. He must show the "manifest necessity" for the termination; if he cannot, then the double jeopardy clause will bar retrial of

the defendant. *State v. Sharp*, 104 Idaho 691, 662 P.2d 1135 (1983).

Where a trial is terminated at the request of, or with the consent of a defendant, the defendant is deemed to have waived his double jeopardy rights; thus, there is no constitutional barrier to re prosecution. *State v. Sharp*, 104 Idaho 691, 662 P.2d 1135 (1983).

Where after jury was sworn defendant moved to dismiss the action for failure of plaintiff to comply with discovery order, whereupon judge granted a continuance to permit compliance with the order and then at the second date set for trial defendant moved for dismissal on grounds of double jeopardy which motion was denied by the judge who stated that he was treating the first proceedings as a mistrial and defendant thereupon asserted that even though the trial was continued at his request he was goaded into requesting the continuance due to misconduct of prosecutor and thus he did waive his double jeopardy rights, since there was no indication that the conduct of the prosecutor in failing to file a written response to the discovery was fraudulent or intended for the sole purpose of forcing the defendant to ask for a mistrial, defendant's double jeopardy rights were not violated. *State v. Sharp*, 104 Idaho 691, 662 P.2d 1135 (1983).

Where the jury deliberated for a total of more than four hours, and where the jury foreman, upon returning to court for the second time, indicated that it would be useless to deliberate further, the trial court did not abuse its discretion in declaring a mistrial after determining that the jury was hopelessly deadlocked, and the retrial of the defendant did not violate the constitutional prohibition against double jeopardy. *State v. Talmage*, 104 Idaho 249, 658 P.2d 920 (1983).

The Fifth Amendment to the United States Constitution and this section refer to jeopardy for the same offense and do not prohibit placing an accused in jeopardy on multiple charges so long as the government has the burden of proving for each charge at least one element not common to the others. *State v. Sensenig*, 110 Idaho 83, 714 P.2d 52 (Ct. App. 1985).

Revocation of probation constitutes neither a multiple trial nor a multiple punishment; it does not involve a new trial to consider the guilt or innocence of matters already decided, and it does not involve an additional punishment, because the revocation of probation involves only the enforcement of conditions already imposed. Thus the defendant was not put in double jeopardy when court considered, among other things, evidence relating to his conduct prior to his being placed on probation in order to determine if revocation of probation was justified. *State v. Chapman*, 111 Idaho 149, 721 P.2d 1248 (1986).

To charge a defendant with two offenses when only one was committed violates the defendant's right against double jeopardy; in deciding the propriety of aggregating several small larcenous acts into one charge of grand larceny, the test is whether the items were possessed as a part of a single incident or pursuant to a common scheme or plan reflecting a single, continuing criminal impulse or intent. *State v. Major*, 111 Idaho 410, 725 P.2d 115 (1986).

The filing of a second criminal action after dismissing the first is not a per se violation of the federal due process clause, or this section. *State v. Barlow's, Inc.*, 111 Idaho 958, 729 P.2d 433 (Ct. App. 1986).

The double jeopardy clause serves not only to preserve the integrity of final judgments and to protect against multiple punishments for the same offense, but they also protect an accused from the burdens of facing a second trial when the first does not proceed to judgment; thus, jeopardy attaches when the jury is impanelled and sworn. *State v. Nab*, 113 Idaho 168, 742 P.2d 423 (Ct. App.), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

The defendant's second trial did not violate the guarantee against double jeopardy because the defendant waived his right to have the then existing tribunal decide his guilt or innocence by moving for a dismissal on grounds unrelated to factual guilt or innocence. *State v. Nab*, 113 Idaho 168, 742 P.2d 423 (Ct. App.), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

The double jeopardy clause protects against a second prosecution for the same offense after acquittal, protects against a second prosecution for the same offense after conviction, and protects against multiple punishments for the same offense. *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991), cert. denied, 503 U.S. 908, 112 S. Ct. 1268, 117 L. Ed. 2d 495 (1992), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

A sentence imposed for conviction of a crime, then enhanced for the use of a firearm during the crime, does not violate a defendant's right to be free from double jeopardy and the enhancement is equally valid if a deadly weapon other than a firearm was used. *State v. Hernandez*, 120 Idaho 653, 818 P.2d 768 (Ct. App. 1991).

In addition to the double jeopardy provisions of Const., Art. I, section 13, § 18-301 (since repealed) provides protection against multiple punishments for the same act or acts, and has been held to provide a greater scope of protection than the constraints of double jeopardy found in the Idaho Constitution. *State v. Seamons*, 126 Idaho 809, 892 P.2d 484 (Ct. App. 1995).

Although introduction of evidence of a percentage likelihood of intoxication based solely upon a horizontal gaze nystagmus (HGN) test did not constitute prosecutorial misconduct warranting declaration of mistrial or dismissal, the dismissal of charges after jeopardy had attached prevented retrial under constitutional prohibitions against double jeopardy. *State v. Stevens*, 126 Idaho 822, 892 P.2d 889 (1995).

The defendant in a criminal case waives the double jeopardy bar to retrial by moving for or consenting to a mistrial or similar disposition of the trial. *State v. Hansen*, 127 Idaho 675, 904 P.2d 945 (Ct. App. 1995).

There is no logical distinction in reference to their import for double jeopardy purposes, between seeking a mistrial and requesting that a jury be stricken and the case dismissed. *State v. Hansen*, 127 Idaho 675, 904 P.2d 945 (Ct. App. 1995).

Generally a defendant in a criminal case may waive the double jeopardy bar by motioning for mistrial; however, a defendant who moves for a mistrial may raise a bar to retrial if the motion was induced by prosecutorial or judicial conduct designed specifically to provoke the defendant into calling for a mistrial. *State v. Pugsley*, 128 Idaho 168, 911 P.2d 761 (Ct. App. 1995).

Where defendant was on trial for lewd conduct and rape but did not receive a copy of a potentially exculpatory videotaped interview of the victim because it was misplaced by the sheriff's office and where the record supports the district court's finding that the videotape was inadvertently misplaced and was not intended by the prosecution to provoke a mistrial, the defendant's subsequent motion for a mistrial, in effect, waived his right not to be subjected to jeopardy twice for the same offense. *State v. Pugsley*, 128 Idaho 168, 911 P.2d 761 (Ct. App. 1995).

Interpreting the Idaho Constitution's double jeopardy provision in the same manner as the U.S. Constitution, the license suspension of defendant, following her failure to pass a sobriety test, did not constitute punishment for the purposes of the double jeopardy clause of the U.S. Constitution and she could, in addition to the license suspension under § 18-8002A, be prosecuted for driving under the influence of alcohol pursuant to § 18-8004. *State v. Reichenberg*, 128 Idaho 452, 915 P.2d 14 (1996).

In light of recent precedent from the United States Supreme Court, § 37-2744 does not create forfeiture proceedings which are criminal in nature or which result in punishment for double jeopardy analysis; conviction for possession of a controlled substance with intent to deliver and forfeiture of pickup truck affirmed. *State v. McGough*, 129 Idaho 371, 924 P.2d 633 (Ct. App. 1996).

The reimbursement requirements of § 72-801 are in the nature of a civil forfeiture. Reimbursement under § 72-801 clearly bears a legitimate remedial purpose: the repayment of money to which the employee was never entitled. In addition, reimbursement bears a rational relationship to that purpose. Thus, the imposition of a criminal punishment under § 41-293 and reimbursement under § 72-801 does not constitute double jeopardy in violation of the United States Constitution's Double Jeopardy Clause, or the Idaho Constitution. *Berglund v. Potlatch Corp.*, 129 Idaho 752, 932 P.2d 875 (1996).

Where defendant was served with a notice of jeopardy assessment and demand for payment of a controlled substance tax and state seized certain property of defendant and he filed a petition for redetermination pursuant to § 63-4208(2)(b), by filing such petition defendant prevented the notice of jeopardy from becoming final and when commission on redetermination withdrew the notice of jeopardy assessment and returned defendant's property the notice of jeopardy assessment never became final and thus defendant was never put in jeopardy, therefore, criminal charges against defendant could not be dismissed on ground that continued prosecution against him would constitute a violation of § 18-301 as guaranteed by Const. Art. 3, § 13. *State v. Gett*, 130 Idaho 196, 938 P.2d 1234 (1997).

Tax commission's imposition of tax on illegal drugs seized from the defendant did not violate the defendant's double jeopardy rights because the tax was imposed by the state, and the defendant was criminally convicted in federal court. *Garcia v. State Tax Comm'n*, 136 Idaho 610, 38 P.3d 1266 (2002).

Magistrate erred in granting defendant's motion for acquittal under Idaho Crim. R. 29 because the magistrate improperly found that the state official who requested defendant to leave the premises failed to express an adequate reason for doing so, and such was not an element in the trespass statute, Idaho Code § 18-7008(8); because the magistrate's dismissal was based on an erroneous legal conclusion, double jeopardy principles under Const., Art. I, § 13 did not bar a retrial of defendant on the trespass charge. *State v. Korsen*, 138 Idaho 706, 69 P.3d 126 (2003).

Resentencing defendant to death in light of a later case did not violate the Double Jeopardy Clause, where the fact finder in defendant's case made those findings necessary to impose a death sentence, which was the sentence he received at his original trial, and in no sense had a fact finder concluded that the State failed to prove aggravating circumstances beyond a reasonable doubt. On resentencing, then, defendant would not face sentencing on a charge of which he had been previously "acquitted" for double jeopardy

purposes. *State v. Lovelace*, — Idaho —, 90 P.3d 298 (2004).

Defendant's argument that her prior conviction pursuant to her guilty plea, vacated on appeal because the indictment was jurisdictionally defective for failing to allege an essential element of the offense, triggered double jeopardy protection was overruled, and defendant's conviction of felony injury to a child was affirmed because a defendant who procured a judgment against her upon an indictment to be set aside could be tried anew upon the same or upon another indictment for the same offense of which she had been convicted. Idaho Code § 19-1719 did not bar a second prosecution where an initial conviction was reversed on appeal due to a jurisdictional deficiency in the charging document, and Idaho Code § 19-3902 on its face did not purport to apply to the opening of a new criminal case after a conviction had been vacated on appeal. *State v. Byington*, — Idaho —, 81 P.3d 421 (Ct. App. 2003).

Due Process of Law.

Where litigant is afforded right to have his cause tried and determined under same rules of procedure as are applied to other similar cases, he can not claim that he is deprived of due process of law. *Eagleson v. Rubin*, 16 Idaho 92, 100 P. 765 (1909).

Where the statute (see § 18-2505) provides full opportunity to every person charged with violation thereof to have charge prosecuted, tried, and determined in court having jurisdiction of same, under same forms of law as are provided for trial of all other crimes under Constitution and laws of state, it provides due process of law. *In re Mallon*, 16 Idaho 737, 102 P. 374, 22 L.R.A. (n.s.) 1123 (1909).

Due process of law requires that one be heard before his rights are adjudged. *Mays v. District Court*, 34 Idaho 200, 200 P. 115 (1921).

Due process of law is not necessarily satisfied by any process which the legislature may provide by law, but by such process only as safeguards and protects the fundamental, constitutional rights of the citizen. *Abrams v. Jones*, 35 Idaho 532, 207 P. 724 (1922).

Due process of law has been variously held to mean a law which hears before it condemns, which proceeds on inquiry, and renders judgment only after trial. *Gilbert v. Elder*, 65 Idaho 383, 144 P.2d 194 (1943).

The right to use one's property in a lawful manner is within the protection of subdivision (1) of the 14th amendment of the Constitution of the United States, and this section providing that no person shall be deprived of life, liberty or property without due process of law. *O'Connor v. City of Moscow*, 69 Idaho 37, 202 P.2d 401 (1949).

A zoning ordinance which prohibits the

continuation of existing lawful businesses within a zoned area is unconstitutional as taking property without due process of law and being an unreasonable exercise of the police power. *O'Connor v. City of Moscow*, 69 Idaho 37, 202 P.2d 401 (1949).

Zoning ordinances generally look to the future and while preventing the establishment of lawful businesses, yet avoid violations of the due process clauses of the state and federal constitutions by permitting existing nondangerous businesses to remain. *O'Connor v. City of Moscow*, 69 Idaho 37, 202 P.2d 401 (1949).

Where district court on appeal of conviction from probate court entered judgment against defendant and sureties, good cause for failure to try defendant at next term was shown, since court had disposed of case. *State v. Eikelberger*, 71 Idaho 282, 230 P.2d 696 (1951).

Requirement that applicants for old-age assistance enter into an agreement for assignment of real estate of applicants as security for advancements by state does not deprive applicants of property without due process of law, as the state in the interest of the common welfare may restrict or limit the right to hold property, and since furnishing by the state of old-age assistance is in the interest of the common welfare the state can impose reasonable restrictions on property in granting old-age assistance. *Newland v. Child*, 73 Idaho 530, 254 P.2d 1066 (1953).

"Lack of trustworthiness" and "fraudulent and dishonest practices" listed as grounds for refusal of a license are not so indefinite as to violate due process. *Williams v. O'Connell*, 76 Idaho 121, 278 P.2d 196 (1954).

Session Laws 1953, ch. 252 amending § 7-717 by providing that the plaintiff in an eminent domain proceeding may file an affidavit appraising the damages, and that the court upon the filing of such affidavit may enter an order that upon payment of double such amount, the plaintiff may take immediate possession is unconstitutional, since it does not provide for an impartial tribunal to fix the damages, and violates requirement that compensation must be paid before the taking. *Yellowstone Pipe Line Co. v. Drummond*, 77 Idaho 36, 287 P.2d 288 (1955).

Labor union was not deprived of due process of law contrary to this section where it was enjoined from picketing and displaying sign which announced that plaintiff's store was unfair to labor union where the employees of the store did not belong to the union, did not participate in picket line, and were not involved in any labor dispute with the plaintiff. *J.J. Newberry Co. v. Retail Clerks Int'l Ass'n*, 78 Idaho 85, 298 P.2d 375 (1956), rev'd, 352 U.S. 987, 77 S. Ct. 386, 1 L. Ed. 2d 367 (1957).

The Idaho constitutional provisions relating to searches and seizures and due process of law are substantially the same as those of the United States Constitution. *State v. Peterson*, 81 Idaho 233, 340 P.2d 444 (1959).

Where properly raised question of consideration is ignored by trial court in rendering judgment in suit based on promissory note, the judgment violated due process by denying the opportunity, upon reasonable notice, for a fair hearing on the question. *Prather v. Loyd*, 86 Idaho 45, 382 P.2d 910 (1963).

Former law which regulated pre-arranged funeral plans was a proper exercise of the police power of the state and did not place arbitrary, capricious or unreasonable restrictions on appellant's business and thus did not unconstitutionally impair appellant's contracts without due process of law. *Messerli v. Monarch Memory Gardens, Inc.*, 88 Idaho 88, 397 P.2d 34 (1964).

Section 49-1505, authorizing the commissioner of law enforcement to require one involved in an accident to post security and to suspend the license of one failing to deposit such security prior to a hearing, does not deprive such a one of due process of law. *Adams v. Pocatello*, 91 Idaho 99, 416 P.2d 46 (1966).

Action of a village in granting beer license to two later applicants while that of one who had been a licensee for more than twenty years was pending, then enacting ordinance limiting the number of licensees in the village to two, and finally denying the pending application on the ground that there were already two licensees in the village was indicative of a plan or scheme designed to eliminate such applicant's business under color of municipal authority attempted to be exercised retroactively and in an unreasonable, arbitrary, and discriminatory manner and constituted a denial of due process of law. *Winther v. Village of Weippe*, 91 Idaho 798, 430 P.2d 689 (1967).

Action of the industrial accident board in making an award to claimant during a continuance ordered at the close of claimant's evidence, without offering the defendants an opportunity to present a defense was a denial of due process of law. *Duggan v. Potlatch Forests, Inc.*, 92 Idaho 262, 441 P.2d 172 (1968).

Where the evidence indicated that the applicant was "pressured" not by the police officers, who made no threats or promises, but by the statute itself, which forces the hard choice between taking blood alcohol content test or losing one's operator's license, the statute did not detract from the knowing and intelligent nature of appellant's decision to take the test. *State v. Turner*, 94 Idaho 548, 494 P.2d 146 (1972).

The standard of review to be applied in the court's scrutiny of legislation under the due

process inquiry is whether the challenged law bears a rational relationship to the preservation and promotion of the public welfare. *Jones v. State Bd. of Medicine*, 97 Idaho 859, 555 P.2d 399 (1976), cert. denied, 431 U.S. 914, 97 S. Ct. 2173, 53 L. Ed. 2d 223 (1977).

Although § 42-607 concerning the distribution of water does not provide for notice and hearing prior to the shutting off of adjudicated water rights, it is not in violation of procedural due process, since the need to restrict the use of water in times of shortage constitutes an extraordinary circumstance where valid governmental interest justifies the postponement of notice and hearing. *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977).

Where a trial court sentenced a defendant, retained jurisdiction over him for 120 days pursuant to § 19-2601(4) and then relinquished jurisdiction, the court's failure to provide the defendant with notice and a hearing regarding such relinquishment did not violate his constitutional rights since the relinquishment was not an imposition of sentence but was an execution of a sentence previously imposed. *State v. Ditmars*, 98 Idaho 472, 567 P.2d 17 (1977), cert. denied, 434 U.S. 1088, 98 S. Ct. 1284, 55 L. Ed. 2d 793 (1978).

The termination of the statutory period for retention of jurisdiction over a criminal defendant under § 19-2601(4) does not constitute an arbitrary deprivation of liberty and does not, therefore, necessitate a hearing or representation by counsel. *State v. Ditmars*, 98 Idaho 472, 567 P.2d 17 (1977), cert. denied, 434 U.S. 1088, 98 S. Ct. 1284, 55 L. Ed. 2d 793 (1978).

Where the murder weapon and other evidence were lost en route to the FBI for testing, the defendant was not denied due process by reason of the court's refusal to vacate trial setting, since the likelihood of the evidence being exculpatory was purely speculative under the circumstances of the case and since the state alleged that the defendant received notice of such loss well in advance of the trial. *State v. Ward*, 98 Idaho 571, 569 P.2d 916 (1977).

Former § 18-5613 was void for vagueness and violated the right to due process of a defendant convicted of prostitution under that section. *State v. Lopez*, 98 Idaho 581, 570 P.2d 259 (1976).

Where a convicted defendant signed no probationary agreement and where the alleged violations relied on by the court in revoking probation were not based on written complaints or made known to the defendant prior to hearing so that he had no opportunity to prepare a defense, call witnesses or confront his accusers, the defendant's due process rights were violated. *State v. Kerrigan*, 98 Idaho 701, 571 P.2d 762 (1977).

Where the record did not show that a defendant knowingly and intelligently waived his constitutional rights to confront his accusers and refrain from incriminating himself, his guilty pleas were invalid. *State v. Peterson*, 98 Idaho 706, 571 P.2d 767 (1977).

Former § 14-412(6) (repealed), insofar as it requires the use of a mortality table which is 140 years out of date, is an unconstitutional denial of due process. *West v. Tax Comm'n*, 99 Idaho 26, 576 P.2d 1060 (1978).

A prisoner, as well as the state, has a substantial interest in the fairness of the due process used to determine his status, and the sentencing judge, as well as the convict, needs the full benefit of a procedure designed to paint an accurate rehabilitation picture. *State v. Wolfe*, 99 Idaho 382, 582 P.2d 728 (1978).

The failure of § 43-2203 to require publication of notice of the board's adoption of the resolution authorized by that section does not violate the due process clause of this section. *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978).

Due process requires that a statute defining a crime be sufficiently explicit so all persons may know what conduct on their part will subject them to its penalties. However, in determining the sufficiency of a statute, the words of the questioned statute should not be evaluated in the abstract but should be considered with reference to the particular conduct of the defendant. *State v. Lenz*, 103 Idaho 632, 651 P.2d 566 (Ct. App. 1982).

The right to procedural due process guaranteed under both the Idaho and United States Constitutions requires that a person involved in the judicial process be given meaningful notice and a meaningful opportunity to be heard. *Rudd v. Rudd*, 105 Idaho 112, 666 P.2d 639 (1983).

Where husband was given notice of ex-wife's motions concerning division of property, and received an order to appear at a hearing scheduled by the magistrate, and where hearings were held on several dates for the purpose of determining the disputed issues between the parties, husband was not denied his right to procedural due process. *Rudd v. Rudd*, 105 Idaho 112, 666 P.2d 639 (1983).

Due process requires a criminal statute to give fair warning of the conduct prohibited, so that affected persons may conform their conduct to the requirements of the law; however, a criminal defendant suffers no deprivation of due process unless the challenged statute is applied to his disadvantage. *State v. Curtis*, 106 Idaho 483, 680 P.2d 1383 (Ct. App. 1984).

The due process clause of the Idaho Constitution does not necessarily have the same scope as that of the federal Constitution. *Cootz v. State*, 117 Idaho 38, 785 P.2d 163 (1989).

The fact that the Idaho Constitution contains a due process clause with the same language found in the fourteenth amendment to the Constitution of the United States indicates that the drafters of the Idaho Constitution believed that the federal due process clause did not make it unnecessary for the Idaho Constitution to guarantee due process of law. *Cootz v. State*, 117 Idaho 38, 785 P.2d 163 (1989).

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Sweitzer v. Dean*, 118 Idaho 568, 798 P.2d 27 (1990).

Defendant's due process rights were not violated where he was denied counsel at his institutional review hearings, nor were these rights violated when the court relinquished its jurisdiction, ordering execution of defendant's sentence without holding another hearing. *State v. Bell*, 119 Idaho 1015, 812 P.2d 322 (Ct. App. 1991).

Defendant's argument that the shortened statute of limitation was an unconstitutional ex post facto law when applied to individuals, who, like defendant, were convicted prior to its passage was without merit, as the period of one year from the effective date of the amendment to § 19-4902 provided a reasonable amount of time in which to file an application and was not, therefore, an impermissible ex post facto law. *Martinez v. State*, 130 Idaho 530, 944 P.2d 127 (Ct. App. 1997).

Imposition of a one-year limit on defendant's right to file an application for post-conviction relief did not violate defendant's right to due process of law. *Martinez v. State*, 130 Idaho 530, 944 P.2d 127 (Ct. App. 1997).

State courts take into consideration the rationale employed by the federal Supreme Court in deciding due process cases. *Williams v. State*, 132 Idaho 437, 974 P.2d 83 (Ct. App. 1998).

—Adoption.

Where natural parents consented to adoption of infant, which consent contained a waiver of notice so that the parents received no notice of where the adoption was taking place or the identity of the adoptive parents, the burden of attempting to revoke the consent without knowledge of the location or identity of the parties is not a denial of due process. *Himmelberger v. Robinson*, 102 Idaho 225, 628 P.2d 1059 (1981).

—Admissions.

Due process principles preclude the acceptance of a stipulation to the truth of persistent violator allegations without judicial inquiry to determine that the defendant makes the admission voluntarily and with an understanding of the consequences. A stipulation to the truth of a persistent violator allegation will be

valid only if the record shows that the defendant entered into the stipulation voluntarily in the sense that the defendant was not coerced, and knowingly in the sense that the defendant understands the potential sentencing consequences. *State v. Cheatham*, — Idaho —, 80 P.3d 349 (Ct. App. 2003).

—Appeal from Administrative Body.

Unless an appeal is provided from the decision of an administrative body to a court of law, due process has been denied. *Graves v. Cogswell*, 97 Idaho 716, 552 P.2d 224 (1976).

Where decision of department of health and welfare resulted in the termination of old age benefits paid to plaintiff by reason of her indigency status, and where plaintiff was without funds and therefore unable to pay required filing fee to pursue action in district court for the purpose of reviewing the decision of the administrative agency, due process required that filing fees be waived, for otherwise plaintiff would have no appeal from the administrative agency decision. *Graves v. Cogswell*, 97 Idaho 716, 552 P.2d 224 (1976).

Although defendants claimed that a hearing examiner was inclined to find in favor of the Department of Law Enforcement in order to attract future cases and compensation from the department, this potential for bias was cured by the fact that the parties had the right to judicial appeal of any administrative decision manifesting an abuse of discretion, arbitrary and capricious disposition, or findings which were clearly erroneous in light of the evidence presented at the hearing. *State ex rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

Where the Idaho State Insurance Fund (SIF) appealed from final decisions and orders of the Industrial Commission to pay for approved medical services performed on two claimants' work-related injuries, contending that the commission's dispute resolution system for the approval of medical charges violates constitutional, statutory, and equitable concerns, the Supreme Court of Idaho found that the SIF, although the SIF did not have a full, formal hearing, had submitted briefs before the commission and filed an appeal from the commission's decision with this court; thus, the dispute resolution system enacted by the commission for the approval of disputed medical charges does provide parties with the opportunity to be heard at a meaningful time and in a meaningful manner. *Boise Orthopedic Clinic v. Idaho State Ins. Fund*, 128 Idaho 161, 911 P.2d 754 (1996).

Workers' compensation claimant waived an argument regarding denial of due process by being precluded (which was not established) from qualifying for reinstatement of benefits by submitting to an independent medical exam, because the claimant failed to offer any

substantial authority for the argument being made. *Brewer v. La Crosse Health & Rehab*, 138 Idaho 859, 71 P.3d 458 (2003).

—Attorney Fee Regulation.

There is a rational relationship between the legitimate legislative purpose to foster sure relief for injured workers and the attorney fee regulation promulgated by the Industrial Commission; the regulation does not violate the equal protection or due process clauses of the United States or Idaho Constitutions. *Rhodes v. Indus. Comm'n*, 125 Idaho 139, 868 P.2d 467 (1993).

—Child Custody.

An ex parte order granting custody of a couple's children to the natural father for a period not exceeding 10 days so that a full hearing could be held did not impose a burden upon the mother's interests sufficient to constitute a due process violation. *Overman v. Overman*, 102 Idaho 235, 629 P.2d 127 (1980).

—Confiscation.

Where the state's motion for confiscation of shotgun under § 19-3807 provided notice, a hearing was held prior to forfeiture at which defendant was represented by counsel, defendant's counsel argued against the motion and had the opportunity to submit to the court a brief on the subject, and the court issued a written opinion setting forth the reasons for granting the motion, procedural due process requirements were met. *State v. Money*, 109 Idaho 757, 710 P.2d 667 (Ct. App. 1985), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

—Contempt.

"Due process of law" does not require jury in contempt proceedings, and there is no necessity for calling upon jury to assist court in exercise of that power. *McDougall v. Sheridan*, 23 Idaho 191, 128 P. 954 (1913).

In civil contempt, the contemnor is entitled to minimal due process; namely, notice and opportunity to be heard. *Crooks v. Maynard*, 718 F. Supp. 1460 (D. Idaho 1989), aff'd, 913 F.2d 699 (9th Cir. 1990).

—Discharged Employees.

The statute providing for the protection of employees who are discharged from employment without receiving compensation due them from employers is not unconstitutional as depriving employer of his property without due process of law. *Olson v. Idora Hill Mining Co.*, 28 Idaho 504, 155 P. 291 (1916), appeal dismissed, 245 U.S. 640, 38 S. Ct. 191, 62 L. Ed. 526 (1918).

Where city employee was terminated without prior warning pursuant to a city policy manual, the district court correctly interpreted the procedure section of the 1987 policy manual, and the notice of suspension and notice of hearing was sufficient to satisfy due

process. *Tiffany v. City of Payette*, 121 Idaho 396, 825 P.2d 493 (1992).

—Discovery.

Even when the defense has made no specific request for discovery, the prosecutor has a constitutional duty to disclose evidence that would create a reasonable doubt of guilt that does not otherwise exist. *State v. Brown*, 98 Idaho 209, 560 P.2d 880 (1977).

Where defendant makes a specific request for discovery, due process requires that the evidence be produced if it might have affected the outcome of the trial. *State v. Brown*, 98 Idaho 209, 560 P.2d 880 (1977).

The state has a constitutional duty under this section to disclose to a criminal defendant exculpatory evidence material to the preparation of his case. *State v. Olsen*, 103 Idaho 278, 647 P.2d 734 (1982).

A defendant's constitutional right to discovery extends only to evidence which is exculpatory or favorable to the defendant and which would be material to his guilt or punishment. *State v. Olsen*, 103 Idaho 278, 647 P.2d 734 (1982).

Due process requires that the accused must be informed of exculpatory information within the prosecutor's possession, however, this protection does not extend to inculpatory evidence; the prosecution is not compelled to volunteer all information which may assist the defense in preparing for trial. *State v. Wight*, 117 Idaho 604, 790 P.2d 385 (Ct. App. 1990).

—Discretion of Public Official.

The power conferred upon the bank commissioner to close a state bank if upon examination it is found insolvent, without awaiting judicial proceedings, is not in conflict with this section. *State ex rel. Allen v. Title Guar. & Sur. Co.*, 27 Idaho 752, 152 P. 189 (1915), appeal dismissed, 240 U.S. 136, 36 S. Ct. 345, 60 L. Ed. 566 (1916).

A law investing a bank commissioner with wide discretion respecting insolvent banks does not violate this section. *State ex rel. Allen v. Title Guar. & Sur. Co.*, 27 Idaho 752, 152 P. 189 (1915), appeal dismissed, 240 U.S. 136, 36 S. Ct. 345, 60 L. Ed. 566 (1916).

A statute whereby the commissioner of law enforcement has authority to suspend the licenses of motor vehicle operators involved in an accident resulting in death, personal injury or property damage without preliminary hearing and without provision for an appeal to a court of competent jurisdiction was held to be unconstitutional in that it was a deprivation of property without due process of law. *State v. Kouni*, 58 Idaho 493, 76 P.2d 917 (1938).

Where the investigating officer at the scene of the burglary fails to attempt to obtain identifiable footprints and fingerprints, the

defendant is not deprived of his opportunity to have a fair trial, nor is such a deprivation a denial of due process of law, and it does not constitute fundamental error. *State v. Wells*, 103 Idaho 137, 645 P.2d 371 (Ct. App. 1982).

—Evidence.

There should be — and in actuality there is now recognized to be — a unified standard of materiality in Idaho, and this standard governs application of the due process clause of this section to those cases where evidence has been withheld by the prosecution, and in those cases where evidence has not been preserved, but its nature can be determined indirectly through other evidence or testimony. Such evidence is "material" under this standard if, viewed in relation to all competent evidence admitted at trial, it appears to raise a reasonable doubt concerning the defendant's guilt. *State v. Leatherwood*, 104 Idaho 100, 656 P.2d 760 (Ct. App. 1982).

The destruction of the body of the murder victim did not violate the defendant's due process right to have access to evidence on jurisdiction where the body was not sufficiently material to the question of jurisdiction, the body's cremation was not prejudicial to the defendant on the jurisdictional issue, and the state did not act in bad faith when it permitted the cremation. *Gibson v. State*, 110 Idaho 631, 718 P.2d 283 (1986).

The due process provisions in the federal constitution and in this section guarantee the right of a defendant in a criminal action to disclosure of exculpatory evidence by the prosecution; due process is also implicated when the state fails to preserve material evidence. *State v. Bruno*, 119 Idaho 199, 804 P.2d 928 (Ct. App. 1990).

The defendant was able to introduce evidence, including testimony of police officers, that he was intoxicated on the night in question, and he had at his disposal further such evidence that he elected not to use, but as he showed no reason to believe that introduction of the medical screening form would have changed the jury's verdict, such undisclosed evidence did not meet the constitutional standard of materiality, and the state's failure to provide it did not deprive the defendant of due process. *State v. Dopp*, 129 Idaho 597, 930 P.2d 1039 (Ct. App. 1996).

In prosecution for battery with intent to commit rape it was unknown whether the victim's sweatshirt was untorn and thereby possessed the exculpatory value that the defendant attributed to it. Consequently, its destruction did not establish a due process violation absent a showing that the government acted in bad faith. No demonstration of bad faith had been made. *State v. Dopp*, 129 Idaho 597, 930 P.2d 1039 (Ct. App. 1996).

Where defendant did not affirmatively ask

for an independent blood alcohol concentration test and refused an offer from the police to use the phone after his arrest, a showing that his son and attorney were at the jail to bond him out and that there was an unexplained delay in his release was insufficient to inform jail personnel that defendant wished to exercise his right to obtain an independent test; hence, defendant's due process rights were not violated by the district court's reversal of the magistrate's order suppressing the police-administered blood alcohol concentration test results. *State v. Cantrell*, — Idaho —, 80 P.3d 345 (Ct. App. 2003).

—Habeas Corpus.

Where a child was sought in habeas corpus proceedings and journalist who had information concerning child's whereabouts refused to answer questions on the subject, the interest of the journalist in concealing her confidential sources and information must yield to the due process rights of the child when the testimony sought was material and relevant; the journalist's interest was subordinate to the interest of the child. *Marks v. Vehlow*, 105 Idaho 560, 671 P.2d 473 (1983).

—Injunction.

Upon a showing that there is a probability that a decision maker in a due process hearing will decide unfairly any issue presented in the hearing, a trial court may grant an injunction to prevent the decision maker from participating in the proceeding. *Johnson v. Bonner County Sch. Dist.*, 126 Idaho 490, 887 P.2d 35 (1994).

—Instructions.

Where defendant was convicted of rape and asserted on appeal that the use of the accessory liability instruction deprived him of due process, for it allowed the jury to consider whether he was guilty of either of two offenses when only one offense had been charged by the information, the court erred in giving such instruction. *State v. Chapa*, 127 Idaho 786, 906 P.2d 636 (Ct. App. 1995).

Where general verdict form was used, asking the jury only whether defendant was guilty of "the charge of rape," the verdict did not reveal whether all the jurors found him guilty of the same act of rape or whether their verdict was unanimous only in that each juror found him guilty of one or the other of the two rapes and defendant was thus deprived of due process when the state, having charged the commission of only one offense in the information, advanced charges of two distinct crimes through instructions given to the jury. *State v. Chapa*, 127 Idaho 786, 906 P.2d 636 (Ct. App. 1995).

—Judicial Procedure.

Guaranty of due process of law is not violated by an act which authorizes summary

seizure and destruction of gambling devices incapable of use for any purpose except in violation of gambling law, as such devices are not property within meaning of this section. *Mullen v. Moseley*, 13 Idaho 457, 90 P. 986, 12 L.R.A. (n.s.) 394, 121 Am. St. R. 277, 13 Ann. Cas. 450 (1907).

For state to take charge, care, and custody of a delinquent minor, for purposes of protecting, educating, and training him, is not depriving him of his liberty without due process of law within purview and meaning of this section. *In re Sharp*, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908).

Session Laws 1911, ch. 226, p. 727, providing for materialman's lien against logging operations, is unconstitutional, in that it provides for taking of property without due process of law. *Anderson v. Great N. Ry.*, 25 Idaho 433, 138 P. 127, 1916C Ann. Cas. 191 (1914).

This section prohibits the making of a statutory right of appeal within five days the exclusive means of attacking a tax assessment for the failure to comply with the statutory requirements, and a suit to make such an attack will lie where the property owner alleges he has not had notice. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936). See, however, *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

In connection with hearings before administrative boards, unless an appeal is provided therefrom to a court, even though the scope of review be limited, due process is not satisfied. *Idaho Mut. Benefit Ass'n v. Robison*, 65 Idaho 793, 154 P.2d 156 (1944).

Section 36-1407 (repealed) providing that dogs running at large in territory inhabited by deer are public nuisances and may be summarily shot constitutes the taking of property without due process of law and is unconstitutional, and the statute is therefore no defense in action for damages by owners of dogs against conservation officer for the shooting of their dogs. *Smith v. Costello*, 77 Idaho 205, 290 P.2d 742 (1955).

Where there was no valid provision for appeal from the order of the board of land commissioners in the Idaho dredge mining protection act and there was no other protection for the property right of the appellant, and the character of the duties and orders of the board of land commissioners and its duly designated hearing agent being judicial in nature, appellant under the act was without remedy to protect his constitutional rights and the order which revoked the dredge mining permit was null and void. *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957).

The requirements of S. L. 1957, ch. 181, § 45-1502 et seq., as to notice and opportunity to be heard, are sufficient to meet the constitutional requirements of due process.

Roos v. Belcher, 79 Idaho 473, 321 P.2d 210 (1958).

The order of the trial court granting appellants' motion to be joined as parties in a condemnation proceeding by providing that the default and the judgments previously entered in the action should have application to them too, was a violation of due process in that they were not afforded an opportunity to be heard. Rich v. Wylie, 84 Idaho 58, 367 P.2d 763 (1962).

Contention of appellant that § 23-1037 is unconstitutional in allowing deprivation of property without due process of law and without affording the licensee an opportunity to be heard was not sustainable in view of former law which afforded the right to judicial determination of the correctness of the commissioner's findings or determination, being commensurate with what is believed to be requirements for due process of law. Blue Note, Inc. v. Hopper, 85 Idaho 152, 377 P.2d 373 (1962).

Where justice of the peace issued a warrant of seizure and destruction of alleged gambling devices on affidavit of officer based on information and question of whether said devices are gambling devices is raised in proceedings seeking to enjoin summary destruction and to show cause why they should not be restored, there being no provision under the code for notice and opportunity to be heard, § 18-3804 (repealed) is unconstitutional in that it denies to respondent due process of law. Prendergast v. Dwyer, 88 Idaho 278, 398 P.2d 637 (1965).

Although the full scope of constitutional due process may not encompass proceedings pertinent to probation, nevertheless, fundamental considerations of fairness and sound judicial administration cannot tolerate an arbitrary deprivation of a probationer's liberty. State v. Edelblute, 91 Idaho 469, 424 P.2d 739 (1967).

The receiving of defendant's plea of guilty and sentencing him for second degree burglary with no reporter present to take down the proceedings and the clerk not present to record the matter was such a lack of fairness and deviation from established rules of procedure as to necessitate the conclusion by the Supreme Court that the defendant had not been afforded the protection of the due process provision of this section. Ebersole v. State, 91 Idaho 630, 428 P.2d 947 (1967).

The discharge of the jury and declaration of a mistrial by the judge who, for reasons of personal prejudice, felt that his continued presence as presiding judge constituted an obstacle to the effectuation of justice, without the consent of the defendants, did not constitute a barrier to another trial on the same information. State v. Cypher, 92 Idaho 159, 438 P.2d 904 (1968).

While the court cannot arbitrarily dis-

charge a jury and it should never be discharged until it appears that there is a breakdown in the judicial machinery such as to render further orderly procedure impossible, the ultimate determination of necessity such as will warrant the discharge of a jury without constituting a bar to another trial on the same information or indictment should normally be left to the sound discretion of the presiding judge, acting under his oath of office, having due regard to the rights of both the accused and the state, and subject to appellate review. State v. Cypher, 92 Idaho 159, 438 P.2d 904 (1968).

Where, upon defendant's appeal from denial of his motion for a new trial following his conviction for the sale of narcotics, the case was remanded for purposes of determining whether a new trial should be granted on the grounds of inadequacy of counsel, it was procedurally inappropriate at that time for the appellate court to review defendant's appeal from the judgment denying his petition for post-conviction relief in view of the fact that a final judgment of conviction had not been entered. State v. Tucker, 97 Idaho 4, 539 P.2d 556 (1975).

Where a trial court's actions in staying a sentence for three months and then holding a hearing for the defendant to show cause why he should not begin serving such sentence placed the defendant in the status of a probationer, the defendant was entitled at the hearing to notice of alleged violations, an opportunity to testify and an opportunity to call and confront witnesses. State v. Kerrigan, 98 Idaho 701, 571 P.2d 762 (1977).

The district court did not err in denying defendant's motion to interject the issue of his court appointed attorney's lack of diligence with respect to an initial motion for post-conviction relief where such issue was raised in a subsequent application for such relief, and defendant's due process rights were not violated by this denial. Gee v. State, 117 Idaho 107, 785 P.2d 671 (Ct. App. 1990).

—Jury Selection.

In an appeal from convictions of burglary challenging the constitutionality of the jury selection process, where the evidence showed that Hispanics, who accounted for 8.2 percent of the county population, were underrepresented in the jury pool by an absolute disparity of five percent and were 61 percent less likely than the average members of the community to be called for jury service, such figures, taken together, were sufficient to show a lack of "fair and reasonable" representation, thereby imposing upon the state an obligation to justify the underrepresentation. However, the state met this burden by showing that the master jury list was derived from county lists of adult, licensed drivers and

registered voters, since such source lists are commonly used and serve a significant state interest in maintaining an efficient, practical jury selection system. *State v. Lopez*, 107 Idaho 726, 692 P.2d 370 (Ct. App. 1984).

While a constitutional challenge to the jury selection process must focus upon systematic underrepresentation of an identifiable group like Hispanics, no such requirement applies to a statutory challenge; a challenge under the Uniform Jury Selection and Service Act (§ 2-201 et seq.) may be based broadly upon a showing that the statutory violation has substantially affected the random nature and objectivity of the process. *State v. Lopez*, 107 Idaho 726, 692 P.2d 370 (Ct. App. 1984).

—Limitation of Actions.

Statute extending time of making proof of application of water to beneficial use does not deprive subsequent permittees of their property without due process of law. *Big Wood Canal Co. v. Chapman*, 45 Idaho 380, 263 P. 45 (1927).

The granting to a nonresident permission, on ex parte application, to file claim against a decedent's estate after an elapse of time allowed by law therefor does not constitute any adjudication of whether the claim is barred by the statute of limitations, since to do so would be a denial of due process of law. *Penn Mut. Life Ins. Co. v. Beauchamp*, 57 Idaho 530, 66 P.2d 1020 (1937).

Statute permitting creditor who, by reason of being out of the state, had not notice of expiration of time to file claim does not preclude personal representative from pleading the bar of the statute of limitations as a defense against such claim when presented, since otherwise he would be denied due process. *Penn Mut. Life Ins. Co. v. Beauchamp*, 57 Idaho 530, 66 P.2d 1020 (1937).

—Liquor Law.

Prohibition law (now repealed) did not contravene this section. *Ex parte Crane*, 27 Idaho 671, 151 P. 1006, 1918A L.R.A. 942 (1915), *aff'd sub nom. Crane v. Campbell*, 245 U.S. 304, 38 S. Ct. 98, 62 L. Ed. 304 (1917).

Idaho Code § 23-903 governing the issuance of liquor licenses is not an arbitrary denial of due process in light of the constitutional provisions governing legislative control over the retail sale of liquor. *Crazy Horse, Inc. v. Pearce*, 98 Idaho 762, 572 P.2d 865 (1977).

—Long-Arm Jurisdiction.

Where plaintiff had an intrauterine device inserted in California, but the infection occurred in Idaho, the operation occurred in Idaho and plaintiff, her physician and surgeon were residents of Idaho, the exercise by Idaho of long-arm jurisdiction over the out-of-state manufacturer of the defective intrauterine device pursuant to § 5-514 did

not violate its right to due process. *Duignan v. A.H. Robins Co.*, 98 Idaho 134, 559 P.2d 750 (1977).

—Mental Health Treatment.

The plaintiff's interest in participating in a group therapy treatment program was not a liberty or property interest protected by the due process clause of the state constitution. *Maresh v. State*, 132 Idaho 14, 970 P.2d 14 (1998).

—Notice.

Session Laws 1903, p. 223, § 34, relative to distribution of water and adjudication of water rights, which authorized a suit for adjudication of water rights to be brought against "all claimants of a right to the use of water" of stream in question, without naming defendants, or requiring any effort for personal service on such defendants as might be found, denied to such defendants due process of law, and was unconstitutional on that ground. *Bear Lake County v. Budge*, 9 Idaho 703, 75 P. 614, 108 Am. St. R. 179 (1904).

Right to due process of law requires, as a condition precedent to a judicial determination affecting right to life, liberty, or property, that personal service of process be obtained when practicable; constructive service can be provided for only when actual service is impracticable. *Bear Lake County v. Budge*, 9 Idaho 703, 75 P. 614, 108 Am. St. R. 179 (1904).

Where statute provided for appeal from decision of state engineer, in a contest of a water permit, and provided that appellant should deliver personally or by registered mail a copy of notice of appeal in manner prescribed for personal service or service by publication of summons, it was sufficient notice to protect rights of all parties concerned, and to give such persons full opportunity for proper hearing in courts established by Constitution of state, and was due process of law. *Speer v. Stephenson*, 16 Idaho 707, 102 P. 365 (1909).

Law authorizing commissioner of law enforcement to suspend driver's license after involvement in accident resulting in personal injury, without notice or hearing, violated this section and was unconstitutional. *State v. Kouni*, 58 Idaho 493, 76 P.2d 917 (1938).

For persons engaged in actionable conduct who subsequently move, leaving no forwarding address by which their whereabouts may be determined, service of summons by publication in a newspaper of general circulation in the area and mailing of copies of the summons and complaint to that party's last known address is reasonably calculated under all the circumstances to apprise that party of the pendency of an action, and does not violate due process. *Evans v. Galloway*, 108 Idaho 711, 701 P.2d 659 (1985).

Where, even if an information had not fully informed defendant of the charge which he had to defend against — trafficking in methamphetamine by manufacturing, a violation of Idaho Code § 37-2732B (a)(3), the preliminary hearing evidence established that defendant was given notice of how the state intended to present its case, and the evidence which had to be refuted at trial; consequently, defendant could not claim prejudice to his defense, and his due process challenge failed. *State v. Dorsey*, — Idaho —, 75 P.3d 203 (Ct. App. 2003).

—Parking Meters.

A parking meter ordinance does not deprive the owner of property, in front of which parking meters are installed without “due process of law”; neither does such an ordinance take such property without payment of just compensation. *Foster’s, Inc. v. Boise City*, 63 Idaho 201, 118 P.2d 721 (1941).

—Parole.

Information that an inmate is a suspect in another, as yet uncharged, crime is relevant to parole decision and a rule that a denial of parole following the commission’s receipt of such information would constitute an “arrest” for the uncharged offense would hamper the functions of both the commission and law enforcement authorities as such; therefore, the denial of parole to defendant was not the equivalent of an arrest for the sexual offense that remained under investigation, his continued incarceration was for the burglary conviction and it was not pretrial detention for the uncharged sex offense, and defendant’s sixth amendment rights were not implicated until formal charges were filed. *State v. Brashier*, 127 Idaho 730, 905 P.2d 1039 (Ct. App. 1995).

Where the district court made sufficient inquiry into the circumstances of defendant’s absence to justify a finding as to whether his absence was voluntary, it was not error to proceed with the second day of trial in defendant’s absence. *State v. Morgen*, 127 Idaho 798, 907 P.2d 116 (Ct. App. 1995).

There is no constitutional right to compel witness attendance at a parole revocation hearing. *Smith v. Idaho Dep’t of Cor.*, 128 Idaho 768, 918 P.2d 1213 (1996).

—Preliminary Hearing Transcript.

Trial court did not err in admitting testimony of witness into evidence through the preliminary hearing transcript where there was no other evidence to support charge of grand theft of certain materials except the testimony of this witness, where the testimony was more probative on the point it was offered than any other evidence which could have been procured through reasonable efforts where substantial efforts were made to

locate the witness but such efforts were unsuccessful and where defendant’s counsel during the preliminary hearing cross-examined the witness and where the motive for preliminary hearing cross-examination was similar to the motive she had during the trial as required by I.R.E., Rule 804(b)(1). *State v. Owen*, 129 Idaho 920, 935 P.2d 183 (Ct. App. 1997).

—Prior Convictions.

The due process clause of the state Constitution does not require that a misdemeanor defendant be notified of the possibility that a conviction may be used to enhance the penalties of any subsequent convictions, and thus, even in the absence of such a warning, a prior out-of-state conviction may be used to enhance the penalties of an Idaho conviction. *Williams v. State*, 132 Idaho 437, 974 P.2d 83 (Ct. App. 1998).

—Prison Discipline.

The “atypical and significant hardship” standard used for the United States Constitution 14th Amendment applies to the Due Process Clause of the Idaho Constitution. Therefore, the prisoner in disciplinary hearing did not have a liberty interest in remaining free from disciplinary segregation under this section. *Schevers v. State*, 129 Idaho 573, 930 P.2d 603 (1996).

Trial court did not err in granting a motion for summary judgment in a case involving a petition for a writ of habeas corpus because appellant was unable to show that any substantive due process rights were violated when appellant was disciplined under a prison rule; the rule prohibiting prisoners from being in unauthorized places was sufficiently explicit to inform appellant that disciplinary action could have been taken when appellant decided to eat breakfast a second time rather than report to work. *Nelson v. Hayden*, 138 Idaho 619, 67 P.3d 98 (Ct. App. 2003).

—Prisoners.

Due process rights extend to prisoners, subject to the qualification that incarceration does necessitate the withdrawal or limitation of many privileges and rights. *Martin v. Spalding*, 133 Idaho 469, 988 P.2d 695 (Ct. App. 1999).

Where an inmate’s loss of ownership of property was a consequence of his own choice to donate the items rather than mail them to another location, there was no deprivation of property by the state which would trigger a right to procedural due process. *Martin v. Spalding*, 133 Idaho 469, 988 P.2d 695 (Ct. App. 1999).

The right of due process was not implicated where prison authorities gave the defendant 45 days in which to dispose of confiscated

contraband by mailing it to another location, donating it or having it destroyed since, even if a deprivation occurred, the authorities' action was not an atypical and significant hardship. *Martin v. Spalding*, 133 Idaho 469, 988 P.2d 695 (Ct. App. 1999).

—Probation Hearing.

Where, in hearing to determine defendant's readiness for probation, the classification committee complied with the procedural guidelines enumerated in *State v. Wolfe*, 99 Idaho 382, 582 P.2d 728 (1978) and in recommending that the court should not grant probation the committee did not act capriciously nor ignore the evidence, but based its decision on the evidence before it, the fact that only six staff members instead of nine participated in the final classification hearing did not make the committee's report deficient or deny defendant due process. *State v. Shofner*, 103 Idaho 767, 653 P.2d 1179 (Ct. App. 1982).

Probation officers often encounter violations that, in the exercise of good judgment, do not demand the extreme remedy of violation proceedings and the officer should be free to delay commencing revocation proceedings, for a reasonable period of time, while he sees how the probationer is responding; unless such delay can be shown to have interfered substantially with the probationer's ability to successfully refute the charge, there is no violation of due process and no waiver of the state's right to proceed. *State v. Teal*, 105 Idaho 501, 670 P.2d 908 (Ct. App. 1983).

Even if a probationer's location is known and the state has failed to act with due diligence to revoke probation, there is no waiver unless the resultant delay is "unreasonable"; a delay is not unreasonable, and a probationer is not entitled to complaint that his federal or state due process rights have been denied, unless he is able to show substantial prejudice to his ability to answer the charge of probation violation. *State v. Teal*, 105 Idaho 501, 670 P.2d 908 (Ct. App. 1983).

Where probationer, who disappeared for three years, left state without permission of Probation and Parole Department, filed no further monthly reports and failed to notify probation or police authorities in other states of his status, fact that state did not seek bench warrant until 18 months after probationer's disappearance did not prejudice his ability to answer the probation violation charge and probation violations were not waived. *State v. Teal*, 105 Idaho 501, 670 P.2d 908 (Ct. App. 1983).

The defendant's due process rights were not violated where the probation officer failed to investigate the circumstances of the probation violations, to investigate the defendant's behavior while on probation, and to investigate the prospects for a continued successful

probation, for while due process must be followed in determining whether to revoke a parole in order to assure that the finding of a parole or probation violation will be based on verified facts and that the exercise of discretion will be informed by an accurate knowledge of the parolee's behavior, that purpose is not furthered by requiring that certain sources of information be acquired by certain individuals. *State v. Chapman*, 111 Idaho 149, 721 P.2d 1248 (1986).

Where district judge did not enter written findings of fact to justify the revocation of the defendant's probation, but he did, from the bench, fully explain his reasons for revoking the probation, and those reasons were transcribed and made a part of the record capable of review, the district court's decision to revoke probation rested on permissible grounds and was supported by the evidence, and the district court did not abuse its discretion in deciding to revoke the probation; accordingly, no due process violation was committed. *State v. Chapman*, 111 Idaho 149, 721 P.2d 1248 (1986).

Where the record showed that information relating to the violation of the defendant's terms of probation, his behavior while on probation, and the prospects of continued successful probation was not suppressed, but rather was considered, this information was sufficient to permit the district court to exercise its discretion properly; moreover, the defendant had full opportunity to submit evidence on these matters. *State v. Chapman*, 111 Idaho 149, 721 P.2d 1248 (1986).

A finding by the Parole Commission that a parole violation has occurred will not be overturned unless the reviewing court can say that the finding represents an abuse of discretion. An abuse of discretion will occur only if the finding of a violation is not supported by substantial reliable evidence or if the procedures followed deprive the parolee of due process. *Craig v. State*, 123 Idaho 121, 844 P.2d 1371 (Ct. App. 1992).

Requirement that inmate be afforded a hearing on a correctional institution's recommendations applies even where the committee recommends probation; however, defendant failed to demonstrate that he suffered some resulting prejudice from summary dismissal under § 19-4906 without a hearing. *Stillwell v. State*, 124 Idaho 366, 859 P.2d 964 (Ct. App. 1993), cert. denied, 511 U.S. 1056, 114 S. Ct. 1619, 128 L. Ed. 2d 345 (1994), cert. denied, 511 U.S. 1056, 114 S. Ct. 1619, 128 L. Ed. 2d 345 (1994).

Defendant's due process rights were not violated when the trial court recalled his case and revoked his probation; until a probation was revoked and a sentence of incarceration was executed, the trial court never lost, and the Idaho Department of Corrections never

acquired, jurisdiction over a probationer, such that the trial court's revisiting of the disposition order was permissible because the reconsideration occurred in what was, in substance, a continuation of the initial disposition hearing. *State v. Done*, — Idaho —, 84 P.3d 571 (Ct. App. 2003).

—Professional License.

Where statute confers license upon an individual to practice dentistry, such license becomes valuable personal right which can not be denied or abridged in any manner except after due notice and fair and impartial hearing before unbiased tribunal. *Abrams v. Jones*, 35 Idaho 532, 207 P. 724 (1922).

This section is violated by the provisions of a statute which have the effect of prohibiting the practice of chiropody. *State v. Armstrong*, 38 Idaho 493, 225 P. 491, 33 A.L.R. 835 (1923).

The 1953 amendment of § 54-901 was declared unconstitutional as violative of this section and § 1 of this article of the Constitution insofar as it effected a doing away with vested rights of dental mechanics or technicians by prohibiting the following of a chosen occupation recognized as an independent calling. *Berry v. Summers*, 76 Idaho 446, 283 P.2d 1093 (1955).

A person has the constitutional right to follow a recognized and useful occupation. *Berry v. Summers*, 76 Idaho 446, 283 P.2d 1093 (1955).

The legislature may regulate occupations connected with the public health, but cannot prohibit same unless they are inherently injurious to public health or have a tendency in that direction. *Berry v. Summers*, 76 Idaho 446, 283 P.2d 1093 (1955).

The right to follow a recognized occupation is a right protected by the constitutional guarantees of liberty. *State ex rel. State Bd. of Medicine v. Smith*, 81 Idaho 103, 337 P.2d 938 (1959).

A person's business, profession or occupation is property within the meaning of this section and is also included in the right to liberty and the pursuit of happiness. The right to pursue a lawful calling, business or profession cannot be arbitrarily taken away but the legislature may have the right to regulate a profession for the protection of society. *Berry v. Koehler*, 84 Idaho 170, 369 P.2d 1010 (1962), *aff'd*, 86 Idaho 225, 384 P.2d 484 (1963).

Not only does the legislature have authority, under the police power, to regulate the practice of dentistry, but also the legislation enacted must reasonably serve the public health, safety and morals of the public. *Berry v. Koehler*, 84 Idaho 170, 369 P.2d 1010 (1962), *aff'd*, 86 Idaho 225, 384 P.2d 484 (1963).

An occupation may not be prohibited unless

it is inherently injurious to the public health, safety or morals, or unless it has a tendency in that direction. *State v. Maxfield*, 98 Idaho 356, 564 P.2d 968 (1977).

The broad conclusion that the application of former § 54-1802 to naturopathy is unconstitutional is incorrect. *State v. Maxfield*, 98 Idaho 356, 564 P.2d 968 (1977).

The right to follow a recognized occupation is a right protected by the constitutional guarantees of liberty. *State v. Maxfield*, 98 Idaho 356, 564 P.2d 968 (1977).

The requirement of former statute governing medical licensing that a diploma from an accredited medical school be presented to the state medical board prior to issuance of license to practice medicine did not violate either the due process clause of the Fourteenth Amendment to the United States Constitution or this section, since requiring accreditation was a rational means of insuring that persons applying for licenses met minimum standards of competency; the possibility that some otherwise qualified persons might thereby be excluded did not make the statute irrational. *State v. Kellogg*, 102 Idaho 628, 636 P.2d 750 (1981).

Placement by bar counsel of private letter of reprimand in lawyer's file pursuant to Idaho Bar Commission Rule 506(f), based on determination that lawyer had violated Idaho Rule of Professional Conduct 3.3(d) by failing to inform magistrate judge of settlement negotiation and tentative agreement between lawyer and out-of-state lawyer in child support payment matter did not deprive lawyer of any property interest, nor did it deprive her of a liberty interest in her professional reputation. *Malmin v. Oths*, 126 Idaho 1024, 895 P.2d 1217 (1995).

—Property Rights.

The destruction or impairment of the right of business access to their property constitutes a "taking of property" whether accompanied by an actual taking of physical property or not, and just compensation must be paid therefor. A summary judgment dismissing landowner's action for impairment and taking of highway access was erroneous. *Mabe v. State*, 83 Idaho 222, 360 P.2d 799 (1961).

The proposed use of property for urban renewal projects, which plaintiff sought to condemn pursuant to the Idaho Urban Renewal Law (§§ 50-2001 et seq.) constituted a public use as required by the Idaho Constitution and various Idaho statutes, even though the majority of buildings would be constructed and occupied by private commercial enterprises, and the taking of property for such purpose would not be a denial of property without due process. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

The tenured professor at a university had a property interest in her employment contract which was constitutionally protected by the due process clauses of both this section and the Fourteenth Amendment to the United States Constitution. *Pace v. Hymas*, 111 Idaho 581, 726 P.2d 693 (1986).

A public employee's interest in continued employment may constitute a property interest, and if such property interest exists, then the government employee is entitled to procedural due process protections of notice and hearing prior to being discharged. *Sweitzer v. Dean*, 118 Idaho 568, 798 P.2d 27 (1990).

In *sua sponte* reducing appellants' uncontested attorney fee agreements without suitable advance notice to all of the parties directly involved, accomplished through properly enacted regulations, and without a meaningful hearing, the commission has acted in disregard of important constitutional mandates. The net result of the commission's *sua sponte* conduct is a deprivation of appellants' property rights under the fee agreement without due process of law. *Curr v. Curr*, 124 Idaho 686, 864 P.2d 132 (1993).

University assistant professor who had not acquired tenure did not have a property interest in his employment that would entitle him to the protections of procedural and substantive due process of law. *Leon v. Boise State Univ.*, 125 Idaho 365, 870 P.2d 1324 (1994).

—Public Contracts.

A statute construed as authorizing a school district to contract for reception of students from another district at a lesser rate of compensation than the actual average cost per capita for education in receiving district is not unconstitutional as denying "due process of law," or "equal protection of the law." *Independent Sch. Dist. No. 6 v. Common Sch. Dist. No. 38*, 64 Idaho 303, 131 P.2d 786 (1942).

Although a losing bidder on a contract to renovate a university building claimed it was entitled to hearing before the State awarded the contract to the winning bidder, the losing bidder lacked a protected property interest sufficient to sustain its constitutional claim because the State properly determined that the winning bidder was the low bidder. *SE/Z Constr., L.L.C. v. Idaho State Univ.*, — Idaho —, 89 P.3d 848 (2004).

—Public Utilities.

This section would be contravened by public utilities company in fixing rates to be charged by it, so clearly undervaluing, or failing to value, a water right belonging to it as to amount to a taking of property without due process of law. *Capital Water Co. v. Public Utils. Comm'n*, 44 Idaho 1, 262 P. 863 (1926).

The public utilities commission's award to a gas utility of an overall rate of return of 8.73%

and a return to equity capital in the range of 13.0% to 13.5% was within the zone of reasonableness and thus was not confiscatory and not in violation of the utility's due process rights. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 113, 540 P.2d 775 (1975).

While a public utility has a due process right to a hearing prior to a commission determination that its filed rates are improper, it is not so entitled where the commission merely dismisses a defective rate increase application without prejudice to refiling of the corrected application. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 98 Idaho 718, 571 P.2d 1119 (1977).

—Sentencing Hearing.

The trial court improperly required the defendant, who had pleaded guilty, to testify for the prosecution at sentencing concerning matters beyond the facts of the case and concerning matters beyond what was necessary at the plea hearing to establish that the defendant pleaded guilty freely and voluntarily. *State v. Wilkins*, 125 Idaho 215, 868 P.2d 1231 (1994).

—Statements of Defendant.

There was no compelling reason to expand the protection of the due process provision of the Idaho Constitution beyond that contemplated in the Fourteenth Amendment of the U.S. Constitution with regard to the statements made by a defendant to law enforcement officers. *State v. Radford*, 134 Idaho 187, 998 P.2d 80 (2000).

—Statements of Prosecutor.

A prosecuting attorney may express an opinion in argument as to the truth or falsity of testimony or the guilt of the defendant when such opinion is based upon the evidence; however, when such a comment is contemplated the prosecutor should exercise caution to avoid interjecting his personal belief and should explicitly state that the opinion is based solely on inferences from evidence presented at trial. *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991), cert. denied, 503 U.S. 908, 112 S. Ct. 1268, 117 L. Ed. 2d 495 (1992), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

Where in summation, prosecutor incorporated phrases such as, "I think that is another embellishment" and "I didn't believe every word he said, I think he shaded his testimony to some degree" with regard to defendant, these portions of prosecutor's argument were improper statements of personal belief or opinion; however, the relevant and critical issue was whether the prosecutor's comments

so infected the trial with unfairness as to make the resulting conviction a denial of due process; upon careful review of the trial record the evidence presented at trial clearly demonstrated defendant's guilt, and the prosecutor's statements were thus harmless. *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991), cert. denied, 503 U.S. 908, 112 S. Ct. 1268, 117 L. Ed. 2d 495 (1992), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

In defendant's trial for murder of a bail bondsman, the prosecutor's statement during closing argument that defense counsel had misled and lied was improper, but did not rise to the level of a fundamental error warranting reversal, because it appeared from the context of the statements by the prosecutor that he was analyzing the credibility of defense counsel's evidence and the inferences that defense counsel was making from that evidence. *State v. Sheahan*, — Idaho —, 77 P.3d 956 (2003).

Prosecutor violated the plea agreement in defendant's aggravated battery case and thus violated defendant's right to due process, where her comments at the sentencing hearing were "fundamentally at odds" with the State's promised sentencing recommendation, which called for leniency, and defendant's sentence was vacated and he was to have been resentenced by different judge. *State v. Jones*, — Idaho —, 77 P.3d 988 (Ct. App. 2003).

—Statute of Repose.

The product liability statute of repose under § 6-1403 is not so vague as to deny plaintiff due process of law. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

—Taxes and Assessments.

State may exempt certain property from taxation without denial of "due process." *Utah Power & Light Co. v. Pfost*, 52 F.2d 226 (D. Idaho 1931), aff'd, 54 F.2d 803 (D. Idaho 1931), aff'd, *Utah Power & Light Co. v. Pfost*, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

Mere inclusion of lands in district can not deprive any owner of due process of law, or equal protection of laws. *Burt v. Farmers Coop. Irrigation Co.*, 30 Idaho 752, 168 P. 1078 (1917); *Booth v. Groves*, 43 Idaho 703, 255 P. 638 (1927); *Stark v. McLaughlin*, 45 Idaho 112, 261 P. 244 (1927).

State constitutions are limitations upon power of legislature, and, so far as taxation legislation is concerned, unless confiscatory, there would perhaps be no violation of due process of law, in absence of restrictions or provisions constituting due process to be in themselves violated. *Idaho County v. Penn Hwy. Dist.*, 43 Idaho 233, 253 P. 377 (1926).

Special assessment for drainage improvement which makes no provision for hearing of landowner as to benefits to his land is unconstitutional. *Booth v. Groves*, 43 Idaho 703, 255 P. 638 (1927).

Mere inclusion of lands in highway district can not deprive any owner of due process of law or equal protection of laws, or entitle him to notice or hearing unless, by reason of inclusion, burdens are attached thereto as legal consequence. *Stark v. McLaughlin*, 45 Idaho 112, 261 P. 244 (1927).

Due process in organizing local special assessment district is afforded by notice to all parties within the district, following ordinance of intention, and hearing before council as to organization of district, and later assessment of benefits by the city. No notice to taxpayers without the district was necessary as no burden was placed on their land. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

Where assessments for local improvements are, by statute, by the terms of the improvement district bonds and by notice of hearing and city ordinance, made a liability upon the property within the district and the liability of each parcel limited thereto, a law making general taxpayers, in and out of the district, liable for a deficiency due the bond holders on account of delinquencies, violates the due process clause and is invalid. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

If no burden was imposed upon what might be termed an external taxpayer, that is, one outside the district but within the city, no notice is required, but if any burden be contemplated, notice and a hearing are required to afford due process. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

The state sales tax act (S.L. 1935 [1st E.S.], ch. 12, partially unconstitutional, and now repealed) placed such arbitrary power in the commissioner in sections 17, 18, 19 and 24 as to deny the retailer due process of law in violation of this section. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

Due process demands that tax assessment roll to which taxpayer may look for information, if it be made the basis of proceedings to deprive him of his property, must conform to the statute requiring it to name him, if known, and, if not, to state that fact; describe his property in order that he be advised of the purpose to assess it and, if necessary, to sell it to raise the amount assessed. These requisites are jurisdictional. *Western Loan & Bldg. Co. v. Bandel*, 57 Idaho 101, 63 P.2d 159 (1936).

The statute authorizing public welfare commissioner to collect expenses for care of inmate of insane institution does not deprive inmate of property without due process of law, since action in court was expressly provided

for. *State ex rel. Macey v. Johnson*, 50 Idaho 363, 296 P. 588 (1931).

This section does not apply to excise taxes and there is no violation of the due process clause in levying an added tax on gasoline to pay for purchase of toll bridges. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

The tax imposed does not violate the fourteenth amendment of the federal Constitution or the due process clause of our own Constitution where the interest received by the Water Company upon bonds payable in another state was interest arising within the state within the meaning of the law imposing the tax on gross income of insurers, it being reasonably related to benefits conferred by the state and income arising out of the state. *John Hancock Mut. Life Ins. Co. v. Neill*, 79 Idaho 385, 319 P.2d 195 (1957).

—Termination of Parental Rights.

Magistrate did not err by dismissing the Idaho Department of Health and Welfare's petition to terminate parental rights where there was no clear and convincing evidence to support the termination based on neglect; the evidence showed that the parent attempted to contact the children, sent them gifts, and provided child support payments. *State Dep't of Health & Welfare v. Roe* (In the Interest of Doe), — Idaho —, 72 P.3d 858 (2003).

—Usury.

Under the usury statute as it has existed since and including the 1919 amendment, any rule which requires rendition of judgment based upon usury, though such issue not be asserted in the action, denies due process of law in judicial proceedings as guaranteed by the constitution. *Reynolds v. Continental Mtg. Co.*, 85 Idaho 172, 377 P.2d 134 (1962).

—Vagueness.

In evaluating a constitutional challenge to a statute on the basis of void for vagueness, the court must consider both the essential fairness of the law and the impracticability of drafting legislation with greater specificity. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

Although most decisions invoking the constitutional void for vagueness doctrine have dealt with criminal statutes and ordinances, this doctrine applies equally to civil statutes. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

Greater tolerance is permitted when addressing a civil or noncriminal statute as opposed to a criminal statute under the void for vagueness doctrine. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

A civil or noncriminal statute is not unconstitutionally vague if persons of reasonable intelligence can derive core meaning from it.

Olsen v. J.A. Freeman Co., 117 Idaho 706, 791 P.2d 1285 (1990).

A statute denies due process of law and raises a constitutional question only when it is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

Although § 6-1403 provides no specific criteria, example or guidelines to determine the useful safe life of a product, absence of definitions does not necessarily render a statute void for vagueness when such terms can be interpreted as taking their ordinary, contemporary or common meaning. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

A test for vagueness of an ordinance may now be stated as follows: first, the court must ask whether the ordinance regulates constitutionally protected conduct; if the answer to this first step is in the affirmative, then the next step asks whether the ordinance precludes a significant amount of the constitutionally protected conduct, and if the answer to this step is also in the affirmative, then the ordinance is quite likely overbroad and must be restricted in its application or rewritten; but if the ordinance does not regulate constitutionally protected conduct, or if the ordinance does not preclude a significant amount of such conduct, then the next and last step is to ask whether (a) the ordinance gives notice to those who are subject to it, and (b) whether the ordinance contains guidelines and imposes sufficient discretion on those who must enforce the ordinance. *State v. Bitt*, 118 Idaho 584, 798 P.2d 43 (1990).

If a statute or ordinance is broad enough to catch everyone, it has no core of circumstances to which it applies and is therefore unconstitutionally vague. *State v. Bitt*, 118 Idaho 584, 798 P.2d 43 (1990).

—Work Release Agreement.

A minimum due process hearing was not required before a prisoner who refused to sign a work release agreement was removed from the program, as the prisoner did not have a recognized liberty or property interest for which there are due process protections. *Coakley v. Murphy*, 884 F.2d 1218 (9th Cir. 1989).

—Workmen's Compensation.

Where an order of the industrial commission was based on an issue of which a workmen's compensation claimant was given no notice, such order violated due process requirements. *White v. Idaho Forest Indus.*, 98 Idaho 784, 572 P.2d 887 (1977).

—Zoning.

Notice, opportunity to present and to rebut evidence, preparation of specific findings of

fact and conclusions of law, and the keeping of a transcribable record comprise a common core of procedural due process requirements, constitutionally mandated in all cases where zoning authorities are requested to change the land use authorized for a particular parcel of property. *Gay v. County Comm'rs*, 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

Nonconforming use rights are substantive due process rights. *Glengary-Gamlin Protective Ass'n v. Bonner County Bd. of Comm'rs*, 106 Idaho 84, 675 P.2d 344 (Ct. App. 1983).

Because the limited right to continue a nonconforming use is constitutionally protected, this right cannot be destroyed by regulatory action under a subsequently enacted zoning ordinance; if a proposed activity comes within the scope of protection afforded a nonconforming use, it will not lose that protection merely because it is the subject of an application for a variance or permit submitted by an owner who mistakenly has assumed that his activity is not protected. *Glengary-Gamlin Protective Ass'n v. Bonner County Bd. of Comm'rs*, 106 Idaho 84, 675 P.2d 344 (Ct. App. 1983).

It cannot be presumed, from the mere fact that a landowner applies for a conditional use permit, that he intends to waive his constitutional protection for those activities which represent prior nonconforming uses and the outcome of the application will not affect the scope of uses constitutionally protected; therefore, the local authorities need not undertake to identify the extent of constitutionally-protected uses, except insofar as it may be helpful in determining the actual extent of additional activities contemplated by the application. In any event, such a unilateral determination by the local authorities is not binding upon the landowner and does not represent an authoritative adjudication of the scope of nonconforming use rights. *Glengary-Gamlin Protective Ass'n v. Bonner County Bd. of Comm'rs*, 106 Idaho 84, 675 P.2d 344 (Ct. App. 1983).

If a landowner affirmatively agrees to waive his claim of constitutional protection with respect to some or all of the nonconforming uses on his property, then the land use authorities and the landowner together may make a record of the waiver and of the specific uses within the scope of waiver. *Glengary-Gamlin Protective Ass'n v. Bonner County Bd. of Comm'rs*, 106 Idaho 84, 675 P.2d 344 (Ct. App. 1983).

Eminent Domain Proceedings.

Attorneys' fees and costs are allowable, in eminent domain proceedings, under I.R.C.P. 54(d)(1), however, such fees and costs are not mandatory as within the definition of just compensation. *Ada County Hwy. Dist. ex rel. Fairbanks v. Acarrequi*, 105 Idaho 873, 673 P.2d 1067 (1983).

Equal Protection of Laws.

The rule requiring uniform operation to all constituents of each class may be carried out in a revenue, as well as police measures. *Utah Power & Light Co. v. Pfof*, 52 F.2d 226 (D. Idaho 1931), *aff'd*, 54 F.2d 803 (D. Idaho 1931), *aff'd*, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

A law imposing burdensome taxes on certain class engaged in transportation and exempting therefrom others engaged in same line of business, without justification or reason for such classification, is unconstitutional. *State v. Crosson*, 33 Idaho 140, 190 P. 922 (1920).

Application of funds raised by municipal assessment for payment of interest and redemption of bonds is not violative of constitutional provisions. *New First Nat'l Bank v. Linderman*, 33 Idaho 704, 198 P. 159 (1921).

Auto transportation license fee of five per cent of gross earnings is not so exorbitant or unreasonable as to render it unconstitutional. *Smallwood v. Jeter*, 42 Idaho 169, 244 P. 149 (1926).

One suing to enjoin exemption statute on constitutional grounds is not in position to raise question that money saved company and turned over to stockholders is taking such money from company without just compensation. *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

Ordinance prohibiting construction of drive in gasoline filling station within five hundred feet of school grounds was unreasonable and therefore unconstitutional. *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353 (1930).

Statute taxing state and national bank shares is not in conflict with this section. *State ex rel. Bank of Eagle v. Leonardson*, 51 Idaho 646, 9 P.2d 1028 (1932).

Exemption of gasoline stations from chain store tax was not a hostile discrimination against particular persons. Such stations are not stores. *J.C. Penney Co. v. Diefendorf*, 54 Idaho 374, 32 P.2d 784 (1934).

A chain store tax is not invalid because it is inapplicable to gasoline filling stations. *J.C. Penney Co. v. Diefendorf*, 54 Idaho 374, 32 P.2d 784 (1934).

Statute taxing trailers does not violate this section by imposing an extra tax on trailers used in connection with auto stages. This is a road license and not a general tax. *Garrett Transf. & Storage Co. v. Pfof*, 54 Idaho 576, 33 P.2d 743 (1933).

The state sales tax act does not violate this section by requiring the vendor to act as a tax collector against his will and without compensation. Legislature had the right to impose the burden on the seller of collecting the tax when he made the sale. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

Caravan tax on automobiles applied to non-residents does not discriminate in favor of residents, since they pay an automobile dealer's license tax. *Geo. B. Wallace, Inc. v. Pfost*, 57 Idaho 279, 65 P.2d 725, 110 A.L.R. 613 (1937).

The caravan act imposing a license or excise tax on automobiles falling within the act is not repugnant to, or in conflict with, this section. *Geo. B. Wallace, Inc. v. Pfost*, 57 Idaho 279, 65 P.2d 725, 110 A.L.R. 613 (1937).

Statute levying a license tax on the occupation of mining does not violate this section. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

Statute excepting from refund of gasoline taxes all vehicles required to be registered was a reasonable classification of persons exempt from the tax and not a denial of due process to those taxed. There is no discrimination under this statute, because it provides a definite and uniform rule for determining when and under what circumstances refunds will be allowed. *State ex rel. Anderson v. Rayner*, 60 Idaho 706, 96 P.2d 244 (1939).

One of Indian blood being tried could not complain that no Negroes, Greeks, or Italians were placed on the jury list, since such failure did not constitute constitutional racial discrimination. *State v. Walters*, 61 Idaho 341, 102 P.2d 284 (1940).

The due process and equal protection provisions of the state and federal Constitutions are not intended to interfere with the power of the state in the exercise of the police powers to prescribe regulations for the protection and promotion of the welfare of the people. *State v. Finney*, 65 Idaho 630, 150 P.2d 130 (1944).

The provisions of § 72-607 (repealed, now see § 72-719) which limited the making of an application for modification of compensation award to four years, but not oftener than once in six months did not limit the remedy so given to any single person or group of persons, therefore it was not unconstitutional as making any classification whatsoever. *Wanke v. Ziebarth Constr. Co.*, 69 Idaho 64, 202 P.2d 384 (1948).

The provisions of § 72-607 (repealed, now see § 72-719) which limited the making of an application for modification of compensation award to four years, but not oftener than once in six months applied to all alike and while it provided that applications be made within a fixed period, to wit four years, that could not render it unconstitutional as a denial of equal protection of the laws. *Wanke v. Ziebarth Constr. Co.*, 69 Idaho 64, 202 P.2d 384 (1948).

Section 72-1429P (repealed) is not unconstitutional in that it does not discriminate between firemen in a class and is not arbitrary or capricious as it has a fair and substantial relation to the object of workmen's compensation legislation. *Brock v. City of Boise*, 95

Idaho 630, 516 P.2d 189 (1973).

Permitting a higher weight limit for trucks carrying unprocessed agricultural products than for trucks carrying processed agricultural products was an unreasonable classification and subsection (c) of § 49-901 which added such classification was unconstitutional. *Sterling H. Nelson & Sons, v. Bender*, 95 Idaho 813, 520 P.2d 860 (1974).

Section 72-1366 is not unconstitutional as a denial of equal protection since the section is worded in terms of "spouses" and therefore does not discriminate between males and females. *Pyeatt v. Idaho State Univ.*, 98 Idaho 424, 565 P.2d 1381 (1977).

The denial of the right to strike to public school employees, as contrasted to employees in the private sector, does not constitute a denial of equal protection. *School Dist. No. 351 Oneida County v. Oneida Educ. Ass'n*, 98 Idaho 486, 567 P.2d 830 (1977).

Section 72-425, which allows differing workmen's compensation awards dependent on the claimant's age and sex, does not violate equal protection. *Murray v. Hecla Mining Co.*, 98 Idaho 688, 571 P.2d 334 (1977).

Since the differences between the release procedures under §§ 66-327, 66-337 and 66-343 regarding persons involuntarily committed under § 66-329, and the procedures under former statute requiring automatic commitment of defendants acquitted on ground of mental disease or defect, were minor, and since the state is reasonably entitled to take greater precaution in releasing persons judicially determined to have already endangered the public safety than may be appropriate for persons committed under § 66-329, defendants committed under the automatic commitment statute were not denied equal protection of the law. *Penny v. State, Dep't of Health & Welfare*, 103 Idaho 689, 652 P.2d 193 (1982).

To comply with the equal protection provisions of Const., Art. 1, §§ 2 and 13, there must be some reasonable ground or basis for the distinction between classes of persons imposed by a particular statutory scheme. *Everett v. Trunnell*, 105 Idaho 787, 673 P.2d 387 (1983).

Because the right to recover for wrongful death is not a fundamental right, a classification scheme imposed under a wrongful death statute must merely be shown to bear some rational relationship to a permissible state objective in order to meet equal protection requirements. *Everett v. Trunnell*, 105 Idaho 787, 673 P.2d 387 (1983).

The state objective under the wrongful death statute was to change the common law to allow recovery for wrongful death, while at the same time limiting that recovery to those persons most likely to suffer a loss such as a surviving wife and child; this limitation on

the statutory cause of action is reasonable and bears a rational relationship to a legitimate state objective. Accordingly, parents who were denied right to sue for wrongful death of son were not denied equal protection of the laws. *Everett v. Trunnell*, 105 Idaho 787, 673 P.2d 387 (1983).

The Legislature's imposition of a 60-day time requirement in § 72-439 before providing compensation for diseases which take a considerable period of time to develop bears a reasonable relation to the goal of fairness to the employer and also lessens the burden on the compensation system; thus, § 72-439 does not violate either the equal protection clause or the due process clause of either the United States or Idaho Constitutions. *Bint v. Creative Forest Prods.*, 108 Idaho 116, 697 P.2d 818, appeal dismissed, 474 U.S. 803, 106 S. Ct. 35, 88 L. Ed. 2d 28 (1985).

The wrongful death statute (§ 5-311) created a new cause of action in favor of those who stand in greatest need of recovery, i.e., the decedent's "heirs." This legislative limitation on the number of plaintiffs who may bring an action is a reasonable exercise of legislative authority and bears a rational relationship to a legitimate state objective and therefore is not violative of the equal protection provisions of either this section or the United States Constitution. *Nebeker v. Piper Aircraft Corp.*, 113 Idaho 609, 747 P.2d 18 (1987).

A prisoner's equal protection rights were not violated when he was removed from a work release program upon his failure to sign a work release agreement, as the State has a legitimate interest in insuring that an inmate on work release understands his or her obligations to the Department of Corrections and to the community in which he or she will work, and the requirement that an inmate sign the work release agreement is rationally related to this end. *Coakley v. Murphy*, 884 F.2d 1218 (9th Cir. 1989).

Exculpatory Evidence.

—Destruction.

The state is constrained in disposing of potentially exculpatory evidence which is evidence which clears or tends to clear an accused person from alleged guilt, or excuses that person. *Gibson v. State*, 110 Idaho 631, 718 P.2d 283 (1986).

The destruction of the body of the murder victim did not constitute a violation of the defendant's due process right to have access to potentially exculpatory evidence since the body held evidence allegedly relating to only the jurisdictional question and not to questions of guilt or excuse. *Gibson v. State*, 110 Idaho 631, 718 P.2d 283 (1986).

—Disclosure.

The state has a constitutional duty to disclose exculpatory evidence material to the

preparation of a defendant's case; however, a delayed disclosure does not uniformly constitute reversible error. Where the question is one of late disclosure rather than failure to disclose, the inquiry on appeal is whether the lateness of the disclosure so prejudiced the defendant's preparation or presentation of his defense that he was prevented from receiving his constitutionally guaranteed fair trial. *State v. Dallas*, 109 Idaho 670, 710 P.2d 580 (1985).

Where the existence of exculpatory material came to the defense's attention immediately following the opening of the state's case-in-chief, the defendant was able to obtain copies and utilize them in the presentation of his defense, there was no evidence of tampering or bad faith on the part of the state, and defendant made no showing of prejudice, the belated disclosure of exculpatory material did not so prejudice the defendant's preparation and presentation of his case that he was denied a fair trial. *State v. Dallas*, 109 Idaho 670, 710 P.2d 580 (1985).

Failure to Argue on Appeal.

Where the defendant failed to list violation of the state constitution as an issue on appeal from a summary judgment ruling that the school district violated teachers' due process rights in terminating extra day assignments, and where the defendant failed to argue the issue in its opening brief, the appellate court declined to consider the issue. *Lowder v. Minidoka County Joint Sch. Dist.*, 132 Idaho 834, 979 P.2d 1192 (1999).

Failure to Testify.

The cross examination of the defendant regarding his failure to testify at the preliminary hearing deprived defendant of a fair trial and was a denial of due process. *State v. Haggard*, 94 Idaho 249, 486 P.2d 260 (1971).

Where prosecutor made a comment that the evidence against defendant was un rebutted, the prosecutor's statement was a comment on the evidence and not an impermissible reference to the defendant's failure to testify. *State v. Rawlings*, 121 Idaho 930, 829 P.2d 520 (1992).

Because another offered instruction was sufficient to negate any improper inference that may have resulted from the instruction objected to by defendant, who claimed it violated his right to remain silent as guaranteed by this section, and improperly allowed the jury to consider defendant's silence as evidence of his guilt, the instructions offered, as a whole, did not infringe upon defendant's right not to testify at trial. *State v. Carsner*, 126 Idaho 911, 894 P.2d 144 (Ct. App. 1995).

Fair and Impartial Trial.

Where one convicted of crime seeks to show specific prejudicial error, and record fails to

disclose deprivation of any constitutional right or guarantee, he can not secure reversal on ground that he did not have fair and impartial trial, unless it appears that he was convicted upon incompetent evidence or evidence not tending to prove guilt, or unless it appears from record that trial was conducted so improperly that appellate court can say from record as whole that defendant was deprived of his substantial rights. *State v. Ramirez*, 33 Idaho 803, 199 P. 376 (1921).

Use of terms "lewd" and "lascivious" in § 18-6607 (now § 18-1508) did not violate this section since acts thus defined were further limited by the specific intent required under the act. *State v. Evans*, 73 Idaho 50, 245 P.2d 788 (1952); *State v. Herr*, 97 Idaho 783, 554 P.2d 961 (1976), modified on other grounds, *State v. Tribe*, 123 Idaho 721, 852 P.2d 87 (1993).

Under the circumstances where appellant had not been granted a preliminary hearing for 36 days nor allowed to contact his mother for over 30 days, it was incumbent on the trial court to have issued a writ of habeas corpus to inquire into the question of such imprisonment or restraint for full determination of the legality of his imprisonment or restraint in view of the constitutional guaranty of his right to a speedy and public trial. *Johnson v. State*, 85 Idaho 123, 376 P.2d 704 (1962).

Defendants have the right to be personally present at each stage of their trial, including the impaneling of the jury. *State v. Carver*, 94 Idaho 677, 496 P.2d 676 (1972).

While this section does not guarantee errorless trials, it does ensure fundamental fairness and where a prosecutor did not inform the defense prior to trial that the main prosecution witness had lied and suborned the perjury of another witness, the defendant was denied a fair trial. *Schwartzmiller v. Winters*, 99 Idaho 18, 576 P.2d 1052 (1978).

Prosecutor's reference to defendant's exercise of her right not to make any further statements during a post-Miranda interview, adversely affected defendant's due process right to a fair trial because in the context of the testimony, her silence might have given rise to an inference of guilt in the minds of jurors. *State v. Poland*, 116 Idaho 34, 773 P.2d 651 (Ct. App. 1989).

Hispanic people represent a distinctive group in the population, and the use of Hispanic surnames to identify this group with regard to evaluating a jury pool is an acceptable practice for the purposes of establishing a prima facie violation of the "fair cross-section" requirement with regard to jury selection. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S.

915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

In order to establish a prima facie violation of the "fair cross-section" requirement with regard to jury selection the defendant must show (1) that the group alleged to be excluded is a "distinctive" group in the community; (2) that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) that this underrepresentation is due to systematic exclusion of the group in the jury selection process. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

Gross population figures may be used for comparison with a jury pool, to establish a prima facie case with regard to underrepresentation of a particular group in such a jury pool. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

The state is free to designate the source of jury lists, so long as the source reasonably reflects a cross-section of the population suitable in character and intelligence for that civic duty. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

The right to a fair and impartial jury is one of the most sacred and important of the guarantees of the Constitution; where it has been infringed, no inquiry as to the sufficiency of the evidence to show guilt is indulged and a conviction by a jury so selected must be set aside. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

It would be patently unreasonable to require the State to utilize jurors who are not proficient in the English language, unable to understand testimony, directions of the court, or read exhibits and instructions; furthermore, it is not difficult to perceive that the State has a significant interest in the integrity of the jury system, and that that interest is manifestly and primarily advanced by limiting jurors to those who are capable of understanding the proceedings, and as long as the

qualification is equally administered as to all foreign language speakers there is no constitutional infirmity in the requirement that jurors be competent in English. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

The state is entitled to use voter registration and driver's license lists as a means of selecting jurors, and the state may establish minimum qualifications for jurors where the qualifications relate to the juror's competence to understand and administer the law. *State v. Paz*, 118 Idaho 542, 798 P.2d 1 (1990), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

Defendant's right to a fair trial was not violated nor was he prejudiced as a result of late delivery of the jury panel list. *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991), cert. denied, 503 U.S. 908, 112 S. Ct. 1268, 117 L. Ed. 2d 495 (1992), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

In defendant's drug case, a court erred by instructing the jury that it could discuss the case throughout the trial because that violated Idaho Code § 19-2127 and deprived defendant of his right to a fair trial as prejudice reasonably could have occurred. *State v. Palmer*, 138 Idaho 931, 71 P.3d 1078 (Ct. App. 2003).

District court's decision to deny a change of venue in a first-degree murder trial was upheld on appeal because a trial court was able to find enough fair and impartial jurors; defendant was unable to show that the setting of the trial was inherently prejudicial or that actual prejudice could have been inferred from the jury selection process, and there was overwhelming evidence of defendant's guilt. *State v. Yager*, — Idaho —, 85 P.3d 656 (2004).

Inadequacy of Counsel.

To sustain a reversal of conviction on the grounds of inadequacy of counsel, a defendant must make a showing that incompetent conduct of his counsel contributed to the conviction or to the sentence imposed. *State v. Tucker*, 97 Idaho 4, 539 P.2d 556 (1975).

Where defendant was convicted of the unlawful sale of a narcotic and upon defendant's appeal from denial of his motion for a new trial it appeared that defendant's trial counsel may have failed to discover the existence of a tape recording of conversations between defendant and two narcotic agents because of

his inadequate pre-trial investigation, the case was properly remanded for purposes of determining whether a new trial should be granted on the grounds of inadequacy of counsel. *State v. Tucker*, 97 Idaho 4, 539 P.2d 556 (1975).

In an embezzlement prosecution, where defense counsel failed to move to suppress testimony of sheriff and his deputy that defendant had orally confessed to them on the grounds that the testimony was inadmissible under the Miranda decision, and where defense counsel failed to object to introduction of money the sheriff had obtained from defendant in violation of her Fourth Amendment rights, defendant was denied her constitutional right to effective assistance of counsel. *State v. Douglas*, 97 Idaho 878, 555 P.2d 1145 (1976).

Where the appellant claimed that because of incompetency on the part of his trial counsel, his guilty plea was involuntary and he was denied reasonable assistance of counsel, but the record before the court on appeal was devoid of any factual information to support the claims, the proper forum for raising these allegations was post-conviction proceedings as provided by § 19-4901. *State v. Machen*, 100 Idaho 167, 595 P.2d 316 (1979).

Where the record was completely devoid of any hint of counsel's incompetency or his alleged inability to render effective assistance of counsel, the court was not required to conduct a detailed inquiry into the question of counsel's lack of "desire" to be competent or into the source of any attorney-client conflict; furthermore the trial judge should not be required to act as advocate for the defendant in a criminal proceeding, for his only obligation was to afford defendant a full and fair opportunity to present the facts and reasons in support of his motion for substitution of counsel after having been made aware by the court of the problems involved. *State v. Clayton*, 100 Idaho 896, 606 P.2d 1000 (1980).

Where defendant's attorney fails to request an alibi instruction, reversible error is not committed absent a showing the failure was so prejudicial as to render inadequate what was in all other respects reasonably competent assistance of counsel. *State v. Elisondo*, 103 Idaho 69, 644 P.2d 992 (Ct. App. 1982).

Bare assertions and speculation, unsupported by specific facts, do not suffice to show ineffective counsel. *State v. Rendon*, 107 Idaho 425, 690 P.2d 360 (Ct. App. 1984).

No standard of trial court competency requires counsel to make needless objections only to have his objections overruled. *State v. Rendon*, 107 Idaho 425, 690 P.2d 360 (Ct. App. 1984).

Bare assertions or speculations, unsupported by specific facts, do not suffice to show ineffective counsel. Moreover, it is well settled

that those who claim ineffective assistance of counsel must show the resultant prejudice; the claimant must show reasonable probability of a different result if afforded effective assistance. *State v. Kelling*, 108 Idaho 716, 701 P.2d 664 (Ct. App. 1985).

An attorney does not render ineffective assistance merely because he fails to do a needless or futile act; thus, the defense attorney was not required to move for a judgment of acquittal where there was substantial evidence of guilt, and the motion unquestionably would have been denied. *State v. Kelling*, 108 Idaho 716, 701 P.2d 664 (Ct. App. 1985).

On appeal from a denial of post-conviction relief on the ground of ineffective counsel, the failure of defense counsel to move to suppress testimony unlawfully obtained during a custodial interrogation, after the defendant had made at least one equivocal request for counsel, constituted a violation of this section and the Sixth Amendment to the U.S. Const., since such testimony was inadmissible and precluded the defendant from arguing that he was justified in using deadly force as a means of self-defense, thus effectively depriving the defendant of his defense. *Carter v. State*, 108 Idaho 788, 702 P.2d 826 (1985).

Bare assertions and speculations unsupported by specific facts are insufficient to show ineffective counsel. *State v. Potter*, 109 Idaho 967, 712 P.2d 668 (Ct. App. 1985), cert. denied, 501 U.S. 1259, 111 S. Ct. 2911, 115 L. Ed. 2d 1074 (1991).

To prevail on the claim that he was denied the right to effective assistance of counsel, defendant must show that his attorney's performance was deficient, and that he was prejudiced because of it; the attorney's performance must be shown to fall below an objective standard of reasonableness to establish such a deficiency. *State v. Freeman*, 110 Idaho 117, 714 P.2d 86 (Ct. App. 1986).

A "strong" presumption that counsel's performance falls within the "wide range of reasonable professional assistance" must be overcome by a defendant in order to prevail. *State v. Freeman*, 110 Idaho 117, 714 P.2d 86 (Ct. App. 1986).

The defendant's counsel was not ineffective because he did not object to the testimony of physician where by asking to withdraw his plea at the sentencing hearing, the defendant invited such an inquiry and made it relevant and permissible. *State v. Freeman*, 110 Idaho 117, 714 P.2d 86 (Ct. App. 1986).

Where defendant's counsel failed to support motion to withdraw guilty plea and failed to subpoena witnesses, but counsel instructed the court that he had been instructed to present the motion but personally had no factual basis to support it and defendant testified and answered prosecutor's and court's question, thereby being given the op-

portunity to explain his actions and state of mind, the defendant failed to overcome the strong presumption that counsel exercised reasonable professional judgment. *State v. Freeman*, 110 Idaho 117, 714 P.2d 86 (Ct. App. 1986).

To sustain a reversal of the conviction on the grounds of ineffective assistance of counsel, the defendant must show that the conduct of counsel contributed to the conviction or to the sentence imposed. *Gibson v. State*, 110 Idaho 631, 718 P.2d 283 (1986).

Since the steps the defendant argued that trial counsel should have taken would not have created a serious question of fact as to jurisdiction, defendant was not prejudiced by their omission; therefore, there was no probability that, but for counsel's alleged unprofessional errors, the result would have been different and the defendant was not prejudiced by the ineffective assistance of counsel. *Gibson v. State*, 110 Idaho 631, 718 P.2d 283 (1986).

This section assures criminal defendant of reasonably competent assistance of counsel. Strategic and tactical choices should not be second-guessed; however, when counsel's trial strategy decisions are made upon the basis of inadequate preparation, ignorance of the relevant law, or other shortcomings capable of objective evaluation, the defendant may well have been denied the competent assistance of counsel. *Gibson v. State*, 110 Idaho 631, 718 P.2d 283 (1986).

The proper standard applicable to an ineffectiveness of counsel claim, under both the federal and state Constitutions, is that a defendant must show that an actual conflict of interest adversely affected the attorney's performance. *McNeeley v. State*, 111 Idaho 200, 722 P.2d 1067 (Ct. App. 1986).

The defendant was not denied effective assistance of counsel because of the joint representation of him and his wife, where the proof against the defendant was overwhelming, and, other than the avoidance of trial, he had no concessions to offer the prosecution. *McNeeley v. State*, 111 Idaho 200, 722 P.2d 1067 (Ct. App. 1986).

The presumption in evaluating attorney effectiveness is that the attorney is competent and that his actions represent sound trial strategy. *Estes v. State*, 111 Idaho 430, 725 P.2d 135 (1986).

To prove ineffective assistance of counsel, it is not enough for a defendant to show that the counsel's performance might have been better, and might have contributed to his or her conviction; rather, the defendant must show actual unreasonable representation and actual prejudice. *Estes v. State*, 111 Idaho 430, 725 P.2d 135 (1986).

In prosecution for rape, the record sustained the trial court's finding that the defen-

dant's conviction was not the result of any alleged incompetent counsel, but resulted from the strong identification testimony of the victim, corroborated by other witnesses at the scene, and the defendant's totally unbelievable explanation for leaving the hotel right after he had checked in and paid cash for his room, only to be found sleeping in his car. *Estes v. State*, 111 Idaho 430, 725 P.2d 135 (1986).

Upon retrial of the defendant for rape, the defense attorney's decision not to interview the victim was not clearly improper where he had an opportunity to study her prior sworn testimony. *Estes v. State*, 111 Idaho 430, 725 P.2d 135 (1986).

In prosecution for rape, the defense attorney's failure to investigate the victim's prior sexual contacts did not constitute inadequacy of counsel and the defendant failed to show prejudice in the light of all the other evidence corroborating the victim's testimony. *Estes v. State*, 111 Idaho 430, 725 P.2d 135 (1986).

Where defendant maintained that the attorney, who represented him at probation revocation hearing, failed to apprise the district court of the seriousness of defendant's mental impairments and, as a result, did not provide him with effective assistance of counsel, defendant did not prove that his attorney failed to provide him with effective assistance of counsel since the record revealed several instances during the probation revocation hearing where defendant's attorney elicited testimony regarding defendant's mental condition; although defendant's attorney could have presented a stronger case by calling defendant's counselors or psychiatrist as witnesses at the hearing, the attorney's failure to do so did not prevent the district court from considering defendant's mental condition in its decision. *State v. Fife*, 115 Idaho 879, 771 P.2d 543 (Ct. App. 1989).

To prevail on an ineffective assistance of counsel claim, the applicant must show that his attorney's performance was deficient, and that he was prejudiced by the deficiency. *Davis v. State*, 116 Idaho 401, 775 P.2d 1243 (Ct. App. 1989).

To establish a deficiency regarding counsel's effectiveness, the applicant has the burden of showing that his attorney's representation fell below an objective standard of reasonableness. *Davis v. State*, 116 Idaho 401, 775 P.2d 1243 (Ct. App. 1989).

An attorney who did not file a motion pursuant to I.C.R. 35 did not thereby provide ineffective assistance of counsel where the attorney, by written correspondence to his client, indicated that such a motion would most likely be unsuccessful but left the decision regarding making such a motion up to the client, and where the client did not follow up on the attorney's letter. *Davis v. State*, 116

Idaho 401, 775 P.2d 1243 (Ct. App. 1989).

An attorney's failure to notify a defendant of the time limit within which to file an appeal did not abridge that defendant's right to appeal where just after defendant's incarceration, his attorney wrote to him regarding the possibility of appeal; the letter informed defendant that the attorney would await further instructions from him as to whether he wished to appeal; and defendant did not respond to his attorney's request at all. *Davis v. State*, 116 Idaho 401, 775 P.2d 1243 (Ct. App. 1989).

Under the circumstances of this case defendant was not prejudiced by counsel's failure to request that the admissibility of the exhibits be determined outside the presence of the jury, so that nonadmissible items would not have been displayed to the jurors, as there does not exist a per se rule that such display, followed by rejection of the exhibits and admonishment by the court, is prejudicial. *Davis v. State*, 116 Idaho 401, 775 P.2d 1243 (Ct. App. 1989).

To establish prejudice as a result of ineffective assistance of counsel, the applicant must show a reasonable probability that, but for his attorney's deficient performance, the outcome of his trial would have been different. *Davis v. State*, 116 Idaho 401, 775 P.2d 1243 (Ct. App. 1989).

Where defendant did not prove resulting prejudice as a result of his attorney's failure to file a timely pretrial suppression motion, defendant did not establish that he was denied effective assistance of counsel. *Davis v. State*, 116 Idaho 401, 775 P.2d 1243 (Ct. App. 1989).

Defendant was not denied effective assistance of counsel due to his trial counsel's recommendation that he waive preliminary hearing and plead guilty, nor due to counsel's failure to advise him of potential ramifications of retained jurisdiction where defendant failed to show any prejudice to his case from the waiver of a preliminary hearing nor did he identify any respect in which his plea was involuntary. *LaBarge v. State*, 116 Idaho 936, 782 P.2d 59 (Ct. App. 1989).

Where, at defendant's change of plea hearing, defendant, who initially claimed that he was forced by police to confess to a rape charge in the absence of counsel, admitted that he had discussed with his attorney the possibility of suppressing his confession and that his guilty plea was not contingent upon the statements he made to law enforcement officials, defendant had not been prejudiced by his attorney's inactivity in pursuing a suppression motion with regard to his confession. *Gee v. State*, 117 Idaho 107, 785 P.2d 671 (Ct. App. 1990).

Defendant was not entitled to post-conviction relief based on ineffective assistance of

counsel, where counsel chose not to call several witnesses, advised defendant not to take the stand, and failed to file an appeal from the conviction where counsel's representation was not to extend to representation on appeal. *Nelson v. State*, 124 Idaho 596, 861 P.2d 1261 (Ct. App. 1993).

Post-conviction relief was granted where, although attorney's failure to advise client of his right of allocution and to provide defendant with a copy of his presentence report did not constitute inadequate representation, defendant's verified application stating that attorney declined to file an appeal, despite defendant's request, did require an evidentiary hearing on the ineffective counsel issue. *Mata v. State*, 124 Idaho 588, 861 P.2d 1253 (Ct. App. 1993).

Where record on direct appeal was devoid of any evidence directed to defendant's allegations of deficient legal representation, the court chose not to rule on the merits, preserving the issue without prejudice so that defendant could pursue the claim in an application for post-conviction relief. *State v. Mitchell*, 124 Idaho 374, 859 P.2d 972 (Ct. App. 1993).

To prevail on a claim of ineffective assistance of counsel, a defendant must establish that the conduct of counsel contributed to the conviction or to the sentence imposed. *Hernandez v. State*, 127 Idaho 685, 905 P.2d 86 (1995).

In order to prevail on a claim that a defendant has been denied his constitutional right to effective assistance of counsel, the defendant must show that his counsel's performance was deficient and that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. These principles also apply to claims of ineffectiveness in appeals. However, when the attorney's deficiency is a failure to file an appeal as requested by the client, the loss of the opportunity to appeal is itself sufficient prejudice to meet the second prong of the *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984) test. *Hernandez v. State*, 127 Idaho 690, 905 P.2d 91 (Ct. App.), *aff'd*, 127 Idaho 685, 905 P.2d 86 (1995).

Defense attorneys do not have a duty to interview all potential witnesses. However, under some circumstances, such a failure can constitute a deficiency of representation. *Milburn v. State*, 130 Idaho 649, 946 P.2d 71 (Ct. App. 1997).

In order to be entitled to relief, one claiming ineffective assistance of counsel must show not only that the attorney's performance fell below reasonable standards of professional conduct but also that the attorney's deficiency prejudiced the client's defense. *Milburn v. State*, 130 Idaho 649, 946 P.2d 71 (Ct. App. 1997).

The failure to satisfy American Bar Association guidelines for the appointment and performance of counsel in death penalty cases does not constitute ineffective assistance of counsel *per se*. *Aeschliman v. State*, 132 Idaho 397, 973 P.2d 749 (Ct. App. 1999).

Where the record was devoid of facts which would have been discovered by additional investigation, and where defense counsel's statement that his office had neither the money nor the staff to take the defendant's case to trial did not cause prejudice to the defendant, who proceeded to trial with the assistance of counsel, defendant failed to set forth genuine issues of material fact regarding whether he suffered prejudice due to trial counsel's alleged ineffective assistance, and summary disposition of his application for post-conviction relief was appropriate. *Aeschliman v. State*, 132 Idaho 397, 973 P.2d 749 (Ct. App. 1999).

The failure of defense counsel to pursue a motion to suppress evidence based upon the lack of a magistrate's signature on the warrant did not constitute ineffective assistance of counsel where defense counsel conducted substantial investigation regarding suppression issues and where, based on his experience and direct contact with the signing magistrate, he reasonably concluded upon discovering the discrepancy on the date of the warrant that the error was merely a clerical oversight not affecting the validity of the finding of probable cause. *State v. Mathews*, 133 Idaho 300, 986 P.2d 323 (1999), *cert. denied*, 528 U.S. 1168, 120 S. Ct. 1190, 145 L. Ed. 2d 1095 (2000).

—Appeal.

Review by the Idaho Supreme Court of a decision by the Court of Appeals is not something to which a party is entitled as a matter of right; rather, granting a petition for review is discretionary with the Supreme Court. Where a defendant has no constitutional right to counsel in a discretionary appeal, he can not be deprived of constitutionally mandated effective assistance of counsel by his counsel's failure to timely file an application for review to the state supreme court. *Hernandez v. State*, 127 Idaho 690, 905 P.2d 91 (Ct. App.), *aff'd*, 127 Idaho 685, 905 P.2d 86 (1995).

Because defendant did not argue that this article of the Idaho Constitution provides greater procedural rights at sentencing than does the Confrontation Clause of the United States Constitution, the court of appeals would not separately consider his state constitutional claim. *State v. Guerrero*, 130 Idaho 311, 940 P.2d 419 (Ct. App. 1997).

—Conflict of Interest.

A single defendant's representation by multiple attorneys does not generate any concern about conflicts of interest. The multiple attor-

ney issue is subject to the ordinary two-part test articulated by the United States Supreme Court for determining whether the right to effective assistance of counsel has been abridged: (1) whether counsel's performance fell below an objective standard of reasonableness, and (2) whether the defense was prejudiced by the deficient performance. *State v. Koch*, 116 Idaho 571, 777 P.2d 1244 (Ct. App. 1989).

A conflict of interest arising from an attorney's representation of multiple defendants has been expressly excepted from the requirement that actual prejudice be shown; prejudice is presumed when defense counsel is burdened by an actual conflict of interest. However, the narrowness of this exception must be emphasized. A presumption of prejudice is triggered only by an actual conflict of interest. The conflict itself must be shown; it will not be presumed. *State v. Koch*, 116 Idaho 571, 777 P.2d 1244 (Ct. App. 1989).

Defendant did not establish he was deprived of the effective assistance of counsel although he claimed counsel failed to comply with reasonable professional standards by providing a copy of the presentence report and consulting with defendant for less than an hour in advance of the sentencing hearing, where defense counsel advised the court of certain inaccuracies in the report and where defendant declined an offer by the court to give him more time to review the report with his attorney before proceeding with the sentencing hearing. *State v. Westmoreland*, 123 Idaho 980, 855 P.2d 65 (Ct. App. 1993).

Defendant failed to show that he was afforded ineffective assistance of counsel due to a conflict of interest. *State v. Dye*, 124 Idaho 250, 858 P.2d 789 (Ct. App. 1993).

Defendant failed to show ineffective assistance of counsel on the grounds of counsel's alleged conflicts of interest based on the fact that two members of the counsel's firm had personal associations with the victim's family as the defendant failed to show that these personal associations, by members of the firm who did not participate in the defense of the defendant's case, affected counsel's representation of the defendant; nor did counsel have a financial interest in the litigation because counsel attempted to have the defendant sign a book and movie deal about his crimes, as this was only an unusual ploy to deter the defendant from making public statements damaging to his own position, and the trial court was satisfied counsel had no real intent to pursue such a deal. *State v. Wood*, 132 Idaho 88, 967 P.2d 702 (1998), cert. denied, 526 U.S. 1118, 119 S. Ct. 1768, 143 L. Ed. 2d 798 (1999).

In-Court Identification.

Where the identification in issue occurred in court where defendant was represented by

counsel and under the impartial eye of the presiding judge, the witness had an opportunity to observe defendant during the robbery for 10 to 15 seconds, the witness identified the defendant without hesitation and the length of time between the crime and the preliminary hearing identification was 17 days, the in-court identification possessed sufficient aspects of reliability in view of the totality of the circumstances to submit the identification evidence to the jury. *State v. Edwards*, 109 Idaho 501, 708 P.2d 906 (Ct. App. 1985).

The following factors are to be considered when determining the reliability of a witness' eyewitness identification at the preliminary hearing or at trial: (1) the opportunity of the witness to view the criminal at the time of the crime, (2) the witness's degree of attention, (3) the accuracy of his prior description of the criminal, (4) the level of certainty demonstrated at the identification, and (5) the length of time between the crime and the identification. *State v. Edwards*, 109 Idaho 501, 708 P.2d 906 (Ct. App. 1985).

—Obstruction of Justice.

One request for a change of counsel, accompanied by a subsequent single appearance without counsel, does not justify an inference that the defendant discharged his counsel in order to delay or hinder the judicial process; thus, the defendant should have been granted a reasonable continuance in order to retain new counsel to be present at the sentencing hearing. *Brown v. State*, 108 Idaho 655, 701 P.2d 275 (Ct. App. 1985).

Failure of defense counsel to call an expert witness to testify concerning physical evidence did not constitute ineffective assistance of counsel where there was no showing that counsel failed to have the evidence independently tested. *State v. Youngblood*, 117 Idaho 160, 786 P.2d 551 (1990).

Ineffective Assistance of Counsel.

Even if defense counsel's election to forego using extensive evidence of murder confession by non-defendant was a tactical one, the record indicated that the decision was made without adequate preparation and may have been such a grievous error as to amount to deficient representation. Therefore, claim that counsel unreasonably failed to use exculpatory evidence could not properly be summarily dismissed on the basis that counsel's decision was one of trial strategy. *Milburn v. State*, 130 Idaho 649, 946 P.2d 71 (Ct. App. 1997).

A capital defendant was not denied effective assistance of counsel or prejudiced by acts of counsel where counsel did not seek to disqualify the district judge based on the belief that the judge would be less inclined to impose the death penalty than other district judges who might draw the case; counsel's failure to liti-

gate suppression issues, even if ineffective, was not prejudicial as the district court's findings and conclusions are supported by the record and would not be reversed; counsel's arranging for a press conference at which defendant made incriminating statements was ineffective assistance, but was not prejudicial because the defendant had independently confessed the crime to members of the press; it was not ineffective for counsel to waive the preliminary hearing where the defendant wanted to waive the hearing; counsel was not ineffective for failing to introduce mitigating evidence as there was nothing submitted to the district court or to this Court that identifies any mitigating evidence that might have changed the outcome of these proceedings; however the defendant was denied effective assistance of counsel and prejudiced by counsel's failure to object to the use of a psychological report at the presentence hearing in violation of I.R.E. 503. *State v. Wood*, 132 Idaho 88, 967 P.2d 702 (1998), cert. denied, 526 U.S. 1118, 119 S. Ct. 1768, 143 L. Ed. 2d 798 (1999).

Trial court properly deferred ruling on defendant's claim of ineffective assistance of counsel because such a claim required the development of a greater record and was best done in the context of a post-conviction proceeding; for the same reason, and because appellate courts generally did not address such claims on direct appeal, the court did not address this issue. *State v. Hayes*, 138 Idaho 761, 69 P.3d 181 (Ct. App. 2003).

Counsel was not ineffective for making a tactical decision not to pursue the issue of the extraterritorial arrest after determining the relevant statutes and researching significant case law and in determining that the arrest issue was not as pivotal as the search warrant issue even though the district court found that the officer was acting outside his jurisdiction and did not have extraterritorial authority pursuant to any exception in Idaho Code § 67-2337 when executing the arrest. *Laughlin v. State*, — Idaho —, 85 P.3d 1125 (Ct. App. 2003).

Defendant's counsel was not deficient with his contention that certain evidence was exculpatory; because defendant was not charged with a completed rape but only with assault with intent to commit rape, the absence of semen on the victim's body or clothing was of no consequence and carried no exculpatory value, and there would have been no reason for defense counsel to focus on this evidence and defendant could not have been prejudiced by his asserted unawareness of its existence. *State v. Mayer*, — Idaho —, 84 P.3d 579 (Ct. App. 2004).

Even assuming the truth of defendant's allegations concerning his lawyer's omission to convey to him information from the police

file, there was no demonstration of deficiency in the attorney's representation of any prejudice to defendant in his ability to make an informed decision whether or not to plead guilty. *State v. Mayer*, — Idaho —, 84 P.3d 579 (Ct. App. 2004).

Information.

Information, which charged defendant with committing lewd and lascivious acts committed on female under the age of 16 with the intent of arousing, appealing to and gratifying the lusts and passions of sexual desires of said defendant and of said minor and which added "with the intent and purpose of having sexual intercourse with said minor child," the last sentence was surplusage, since state intended to charge defendant under § 18-6607 to wit lewd and lascivious conduct. *State v. Petty*, 73 Idaho 136, 248 P.2d 218, petition for writ of habeas corpus denied, 345 U.S. 938, 73 S. Ct. 834, 97 L. Ed. 1364 (1953).

To guarantee a fair and impartial trial an indictment or information under the persistent violator law should be drawn in two separable parts so that the trial for the alleged crime for which the accused is to be tried can proceed in every respect as if there were no allegations of previous convictions. *State v. Johnson*, 86 Idaho 51, 383 P.2d 326 (1963).

Where the property was stolen at the same time from one individual, and, on the same day, the defendant and her associates transported all of the stolen property to the city outside of the Indian reservation, pawned one item there, and proceeded to the reservation where they were arrested, the defendant committed but one offense of possession of stolen property; accordingly, she was properly charged in the information with but one offense, and the amendment to the information adding the property recovered from the pawn shop under the same offense was permissible. *State v. Major*, 111 Idaho 410, 725 P.2d 115 (1986).

An information must be specific in its content, both to protect the defendant from subsequent prosecution based on the commission of the same act and so the accused has a means to prepare a proper defense. This requirement is rooted in both state and federal guarantees of due process. *State v. Banks*, 113 Idaho 54, 740 P.2d 1039 (Ct. App. 1987).

Insanity Plea.

Under former statute requiring automatic commitment of defendant acquitted on ground of mental disease or defect, an accused who asserted the defense of mental disease or defect, and was acquitted on that basis, could be automatically committed to a mental institution without further hearing and such automatic commitment did not violate the acquittee's rights to due process or equal

protection because his dangerous mental condition was established by his own admission. The committed acquittee thereafter bore the burden of establishing his right to release by showing, pursuant to authorized procedures, that he was no longer dangerously insane. *Penny v. State*, Dep't of Health & Welfare, 103 Idaho 689, 652 P.2d 193 (1982).

An accused who successfully asserted the defense of mental disease or defect and was automatically committed to mental institution was not denied his right to a hearing and judicial determination on the question of his mental condition in that those rights were accorded him at the time his defense of mental disease or defect was tendered and accepted. The fact that two separate statutes governed the recognition of those rights, i.e., former statute requiring automatic commitment of defendant acquitted on ground of mental disease or defect and § 66-329 governing involuntary civil commitments did not deny equal protection, but rather simply reflected differing factual settings under which those rights were equally recognized. *Penny v. State*, Dep't of Health & Welfare, 103 Idaho 689, 652 P.2d 193 (1982).

Interrogation of Defendant.

Where during an interview, defendant informed Wyoming police that he wanted to talk to an attorney, a subsequent interview by Idaho police was constitutionally proscribed even though it pertained to offenses unrelated to the subject of the initial interview with Wyoming police, and since a second interview by Idaho police was linked both temporally and psychologically with the first, the second Idaho interview constituted fruit of the poisonous tree even though it was initiated by defendant. *State v. Smith*, 119 Idaho 96, 803 P.2d 1002 (Ct. App. 1990).

The contention that in order to be admissible, statements made in custody must be tape recorded by the police was rejected by the Supreme Court. *State v. Rhoades*, 120 Idaho 795, 820 P.2d 665 (1991), cert. denied, 504 U.S. 987, 112 S. Ct. 2970, 119 L. Ed. 2d 589 (1992).

The admission of the testimony of three inmate witnesses who were called by the state to testify at a murder trial of a fellow inmate, regarding their conversations about the murder with the defendant, was not a violation of the defendant's constitutional rights; where the inmates witnesses had not deliberately elicited information from the defendant and were not promised anything in exchange for their testimony, the inmates could not be considered "governmental agents" and their conversations with the defendant were not unconstitutional interrogations. *State v. Fields*, 127 Idaho 904, 908 P.2d 1211 (1995), cert. denied, 516 U.S. 922, 116 S. Ct. 319, 133 L. Ed. 2d 221 (1995).

Involuntary Absence.

If defendant's car had previously broken down on several occasions due to a faulty transmission and had caused him to be late on the first day of trial, he could and should have arranged for some other means of transportation to the courthouse. Relying upon an automobile that was known to be untrustworthy for transportation to the trial was a calculated risk on his part and not the type of involuntary event that would justify his absence from trial. *State v. Miller*, 131 Idaho 186, 953 P.2d 626 (Ct. App. 1998).

Involuntary Commitment.

The termination and release of an involuntarily committed patient from the state hospital does not necessarily moot his claim that his rights were violated in the course of that commitment. *Danny L. v. Bonnes*, 120 Idaho 868, 820 P.2d 1225 (1991).

Judge's Prosecutorial Actions.

Prosecutorial acts by the trial judge may be violative of a defendant's constitutional rights. *State v. Lankford*, 116 Idaho 860, 781 P.2d 197 (1989), cert. denied, 497 U.S. 1032, 110 S. Ct. 3295, 111 L. Ed. 2d 803 (1990).

Where the trial court called the prosecutor as a witness in support of the state's position at defendant's hearing on his motion for a new trial, the record did not indicate that this was a prosecutorial or prejudicial act by the trial judge; under the circumstances of this case the court acted in the interest of clarifying testimony. *State v. Lankford*, 116 Idaho 860, 781 P.2d 197 (1989), cert. denied, 497 U.S. 1032, 110 S. Ct. 3295, 111 L. Ed. 2d 803 (1990).

Trial judge did not evidence partiality or usurp the role of the prosecutor, or change the prosecution's strategy where the trial judge's comments to the prosecution about the evidence were made outside of the jury's presence, giving no appearance of partiality to the jury; the difficulty addressed arose from the judge's ruling allowing the lab report into evidence with the weight of the methamphetamine shown, and the judge did not show partiality by questioning his own ruling. *State v. Sandoval-Tena*, 138 Idaho 908, 71 P.3d 1055 (2003).

Jury Instruction.

Jury instruction which allowed jury to convict defendant of an offense different from which he was charged was reversible error. *State v. Sherrod*, 131 Idaho 56, 951 P.2d 1283 (Ct. App. 1998).

Lesser Included Offense.

Where, not only were the murders in question committed in the course of a robbery, but there was substantial evidence showing specific intent to cause both deaths, even if the

robbery had not occurred, there was substantial evidence showing that the murders were willful, deliberate and premeditated and thus the robbery did not provide the means of convicting defendant of premeditated first degree murder and therefore the robbery was not a lesser included offense of that crime and is not merged with that conviction. *State v. Pizzuto*, 119 Idaho 742, 810 P.2d 680 (1991), cert. denied, 503 U.S. 908, 112 S. Ct. 1268, 117 L. Ed. 2d 495 (1992), overruled on other grounds, *State v. Card*, 121 Idaho 425, 825 P.2d 1081 (1991), cert. denied, 506 U.S. 915, 113 S. Ct. 321, 121 L. Ed. 2d 241 (1992).

Because the use of a pistol was recited in the elements of the aggravated assault and also appeared in the kidnapping enhancement as charged, the aggravated assault charge was an included offense of the kidnapping charge and the separate conviction for aggravated assault must be vacated. *State v. Bryant*, 127 Idaho 24, 896 P.2d 350 (Ct. App. 1995).

Limitation As to Juror Contact.

The decision to limit juror contact rests in the sound discretion of the trial court. *Cosgrove ex rel. Winfree v. Merrell Dow Pharmaceuticals, Inc.*, 117 Idaho 470, 788 P.2d 1293 (1990).

Limitation on State Action.

This section is a limitation on state action and a bank's set-off against a customer's account without notice is not state action, even though done according to statute, and thus such a set-off is not a violation of due process. *Meyer v. Idaho First Nat'l Bank*, 96 Idaho 208, 525 P.2d 990 (1974).

Even when the trial court errs in directing an acquittal at the end of the state's case, this section precludes retrial of the defendant again for the same offense. *State v. Bennion*, 115 Idaho 181, 765 P.2d 692 (Ct. App. 1988).

Loss of Evidence.

With regard to whether the police acted in good faith when they lost a tape allegedly made during a drug transaction, where an officer testified that he locked three tapes into his desk drawer to which only he and his captain had a key, that the tapes were released to the prosecutor by the officer and inexplicably one of the tapes was lost, the officer's handling of the evidence tapes compared with normal procedures at the department, and although those procedures seemed amateurish, there has been no showing of bad faith, or any disregard of the defendant's rights on the part of the police. *State v. Bruno*, 119 Idaho 199, 804 P.2d 928 (Ct. App. 1990).

Miranda Rights.

With regard to the method of advising a suspect or defendant of his Miranda Rights,

and of obtaining a waiver of those rights, there is no requirement that either be done in writing. *State v. Lankford*, 116 Idaho 860, 781 P.2d 197 (1989), cert. denied, 497 U.S. 1032, 110 S. Ct. 3295, 111 L. Ed. 2d 803 (1990).

When an accused person in custody has invoked his right to counsel under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), his responses to further questions in the absence of counsel may be admitted as evidence only when it is shown that he initiated further discussions with the police and that he knowingly and intelligently waived his right to counsel which he earlier invoked; in addition, proof of such initiation must be established by a preponderance of the evidence. *State v. Kysar*, 116 Idaho 992, 783 P.2d 859 (1989).

Conviction was vacated where, taking the excessive cross-examination and the final argument of the prosecutor together, it was clear that the prosecution went far beyond use of the post-Miranda silence of defendant for any legitimate purpose and sought to establish guilt by defendant's exercise of a constitutional right to remain silent. *State v. Strouse*, 133 Idaho 709, 992 P.2d 158 (1999).

There was no evidence that defendant's uncle, an ex-homicide detective from Los Angeles who arranged for defendant's surrender and drove him to the police station, "subtly coerced" him, making the waiver of his Miranda rights ineffective. *State v. Dunn*, 134 Idaho 165, 997 P.2d 626 (Ct. App. 2000).

Police were not required to give Miranda rights to defendant under arrest for a driving offense and an out-of-state felony warrant before defendant gave consent to search a residence; the evidence showed that defendant was not subject to interrogation at the time, and the conversation leading to the consent was initiated by defendant. *State v. Hansen*, 138 Idaho 791, 69 P.3d 1052 (2003).

Monitoring Conversations With Attorney.

The monitoring and recording of attorney-client conversations while the client is in jail, may deny a defendant the constitutional right of effective assistance of counsel, and his constitutional right to due process. *Stuart v. State*, 118 Idaho 932, 801 P.2d 1283 (1990).

Notice.

Where the Department of Employment gave the unemployment insurance claimant no notice of one issue it would examine, that issue was improperly before the examiner. *Rogers v. Trim House*, 99 Idaho 746, 588 P.2d 945 (1979).

Out-of-Court Identification.

In-court identification of a defendant must be suppressed if it is tainted by an out-of-court identification so suggestive that there is

a very substantial likelihood of misidentification. *State v. Crawford*, 99 Idaho 87, 577 P.2d 1135 (1978).

Evidence of an out-of-court identification shall be suppressed only where, under the totality of the circumstances, the identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of misidentification. *State v. Kysar*, 116 Idaho 992, 783 P.2d 859 (1989).

Factors to be considered in determining whether an identification is sufficiently reliable include: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the level of certainty demonstrated at the identification; and (5) the length of time between the crime and the identification. *State v. Kysar*, 116 Idaho 992, 783 P.2d 859 (1989).

Five factors must be considered to determine the reliability of the identification: (1) the opportunity for the witness to view the criminal at the time of the crime; (2) the degree of the witness' attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated at the identification; and (5) the time span between the crime and the identification. *State v. Best*, 117 Idaho 652, 791 P.2d 33 (Ct. App. 1990).

An identification was not so suggestive as to violate due process where, although the defendant was handcuffed, he was identified by a witness who had numerous opportunities to view the defendant, in several instances at close range during the commission of the crime, and the defendant was not alone when identified by the witness, and additionally the witness identified the defendant even though he was not wearing a blue sweatshirt which the defendant removed before the identification and which the defendant was wearing at the time of the crime. *State v. Buti*, 131 Idaho 793, 964 P.2d 660 (1998).

Although the procedures utilized by police to facilitate a defendant's out-of-court identification were suggestive, the identification contained other indicia of reliability which justified the admission of the identification at trial where the witness had numerous opportunities to view the defendant prior to, during and after the crime, often at very close proximity, the witness had a high degree of attention focused on the defendant during the crime, the witnesses' description and identification of the defendant were consistent and accurate, and the witness identified the defendant in prior, spontaneous meetings. *State v. Cottrell*, 132 Idaho 181, 968 P.2d 1090 (Ct. App. 1998).

Plea Negotiations.

Where plea negotiations were entered into but no agreement was reached, there was no

merit to the defendant's contention that, by entering into such negotiations his constitutional right to a jury trial had been violated. *Stuart v. State*, 118 Idaho 865, 801 P.2d 1216 (1990).

Police Power.

The police power is subject only to the qualification that the measure adopted for the purpose of regulating the exercise of the rights of liberty and the use and enjoyment of property must be designed to effect some public object which the government may legally accomplish, and it must be reasonable and have some direct, real and substantial relation to the public object sought to be accomplished. *State v. Finney*, 65 Idaho 630, 150 P.2d 130 (1944).

The due process and equal protection provisions of the state and federal Constitutions are not intended to interfere with the power of the state in the exercise of the police powers to prescribe regulations for the protection and promotion of the welfare of the people. *State v. Finney*, 65 Idaho 630, 150 P.2d 130 (1944).

An ordinance providing it should be unlawful to open or operate any new or additional places of business in a certain area in which any pool, billiard, card or dice game is played, also that any change of ownership is to be deemed a new or additional business, is an arbitrary and unreasonable exercise of the police power and violates the constitutional protection given by the due process clauses of the state and federal constitutions. *O'Connor v. City of Moscow*, 69 Idaho 37, 202 P.2d 401 (1949).

On application by California plaintiff for an Idaho collection agency permit, he being the employee of a California collection agency, the rejection of such application by the commissioner of finance on the ground that plaintiff was not a resident of the state as was required by § 26-2211 (repealed) was proper, such residence requirement not constituting discrimination between citizens of Idaho and other states and further was a proper regulation under the state police power. *Hankins v. Spaulding*, 78 Idaho 533, 307 P.2d 222 (1957).

Prescribing Hours for Barber Shops.

This section is cited in dissenting opinion of Justice Morgan in a divided opinion upholding the Boise barber shop closing hour ordinance and deciding that the statute prescribing closing hours for barber shops is unconstitutional. *Pearce v. Moffatt*, 60 Idaho 370, 92 P.2d 146 (1939).

Probable Cause.

Probable cause existed to arrest defendant for obstructing and delaying an officer in the discharge of his duties where, as a passenger in a car driven by his wife, defendant was aware that the police were attempting to cite

his wife for various traffic violations, yet, when ordered to keep his hands in plain view, away from the bulge in his jacket, he refused to do so, and where defendant pushed an officer who was using reasonable force to place his hands on the hood of the car in an attempt to pat defendant down. *State v. Wight*, 117 Idaho 604, 790 P.2d 385 (Ct. App. 1990).

In determining whether probable cause to support an arrest existed, the inquiry turns on whether an officer possessed facts which would lead a person of ordinary prudence to entertain an honest belief that the suspect has committed a crime; the officer is entitled to draw reasonable inferences from the facts in his possession, and may base those inferences upon his training and experience as a law enforcement officer. *State v. Webb*, 118 Idaho 99, 794 P.2d 1155 (Ct. App. 1990).

The standards for probable cause are not legal technicalities, but instead are the factual and practical considerations of everyday life upon which reasonable and prudent people act; probable cause deals with the probable consequences of all of the facts considered as a whole, and the determination of probable cause does not require certainty of guilt, but rather the probability that the suspect has committed the offense. *State v. Webb*, 118 Idaho 99, 794 P.2d 1155 (Ct. App. 1990).

Where defendant's car was parked a short distance from a highway in a remote area with the engine running, where defendant was the sole occupant and was slumped behind the wheel, where the hour was late and the officer had unusual difficulty in arousing defendant, where defendant demonstrated prolonged confusion, and where defendant was unable to perform sobriety tests, such circumstances warranted the conclusion of a reasonable and prudent person with the officer's experience that defendant was driving while intoxicated. *State v. Webb*, 118 Idaho 99, 794 P.2d 1155 (Ct. App. 1990).

Professional License.

Section 54-901 prohibits the performance of services in the areas of examination for diagnosis, diagnosing and treatment by technicians, such as the prohibition of the use of carbon paper and indicator paste in their work, such prohibition extending to the use of such indicators as concerns aspects of examination for diagnosis, diagnosing or treatment by the technician, the intent of § 54-901 being made apparent, that of limitation of the field of dentistry to those qualified by established standards. *Berry v. Koehler*, 86 Idaho 225, 384 P.2d 484 (1963).

The definition of the practice of dentistry places a fence around the technician; he could do the mechanical work upon the appliance but the results of his work, for example,

whether the appliance fits must not require his diagnosis, his diagnosing or his treatment; the decision as to whether the appliance is satisfactory being strictly up to the wearer himself. *Berry v. Koehler*, 86 Idaho 225, 384 P.2d 484 (1963).

The requirement in a repealed section which required that every acute care hospital and physician obtain medical malpractice insurance as a condition to licensure, did not violate the guarantees of due process of law, in that the requirement bore a rational relationship to the health and welfare of the citizens of the state by providing protection to patients who could be injured as a result of medical malpractice. *Jones v. State Bd. of Medicine*, 97 Idaho 859, 555 P.2d 399 (1976), cert. denied, 431 U.S. 914, 97 S. Ct. 2173, 53 L. Ed. 2d 223 (1977).

Property Rights.

The defendant irrigation district cannot be required to accept payment of benefits assessed and thereafter be required to deliver water to new lands which have not been irrigated and for which no water right has been acquired or is available. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

Where exercise of the authority transgresses the bounds of reasonableness or is arbitrary in result, to the point where there is an actual taking of private property for public use, to the point where there is a deprivation of property without due process of law, action would lie for damages by way of inverse condemnation or for injunctive relief. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

Where a prisoner's loss of ownership was a consequence of his own choice to donate the items rather than mail them to another location there was no deprivation of property by the state which would trigger a right to procedural due process. *Martin v. Spalding*, 133 Idaho 469, 988 P.2d 695 (Ct. App. 1999).

Protected Rights.

Defendant did not have a protected liberty interest, merely an expectation of such an interest when a district court judge relinquished jurisdiction after defendant's completion of a rider program. *Gilbert v. City of Caldwell*, 112 Idaho 386, 732 P.2d 355 (Ct. App. 1987).

Psychological Evaluation.

The Fifth Amendment to the United States Constitution and this section prohibit compelling a criminal defendant to be a witness against himself or herself. Following the repeal of the insanity defense, no statutory scheme remains through which a psychological evaluation can be compelled without threatening the rights guaranteed under both

of these constitutions. *State v. Odiaga*, 125 Idaho 384, 871 P.2d 801, cert. denied, 513 U.S. 952, 115 S. Ct. 369, 130 L. Ed. 2d 321 (1994).

Public Disturbance Ordinance.

Dismissal of defendant's misdemeanor public disturbance noise charge was improper where American Falls, Idaho, Municipal Code § 6-1-54 was not facially overbroad and vague; the ordinance was content neutral and narrowly tailored to serve a significant governmental interest because governments had a legitimate interest in protecting the well-being, tranquility, and peace of their citizens, as well as their traditional public forums such as city streets and parks, from excess noise. *State v. Medel*, — Idaho —, 80 P.3d 1099 (Ct. App. 2003).

Public Safety Exception.

Motion to suppress statements given to police after another officer was shot and killed were admissible under the public safety exception because the evidence showed that officers were only trying to ascertain whether others were involved and if a weapon was nearby; further, the statements were not involuntary, despite the fact that defendant's arm was broken during handcuffing, and weapons were drawn. *State v. Yager*, — Idaho —, 85 P.3d 656 (2004).

Public Trial.

Defendant in prosecution for crime of assault with intent to commit rape was not deprived of public trial when court, in its discretion, required all spectators and all persons except those necessarily in attendance to retire from court room during trial. *State v. Johnson*, 26 Idaho 609, 144 P. 784 (1914).

Ex parte proceeding conducted by trial court in chambers upon motion of special prosecutor without giving defendant notice or opportunity to attend in which decision to shackle defendant during trial was made violated defendant's rights to a public trial and to be present at all significant stages of a criminal action. *State v. Crawford*, 99 Idaho 87, 577 P.2d 1135 (1978).

Remand.

Where issue presented for decision on remand was not new or different from that initially presented by the motion for new trial and defendant had had the opportunity, in responding to that motion, to address the significance of all the evidence presented at trial, including the disputed testimony of the expert witness, due process did not require that defendant be given a second opportunity to be heard on the same issue after remand. *Keyser v. Garner*, 131 Idaho 338, 955 P.2d 1117 (Ct. App. 1998).

Report of Correctional Institution.

Before a report from a correctional institution is sent back to the sentencing judge

pursuant to his retained jurisdiction, certain procedures must be followed: the prisoner must be given adequate notice before the hearing, including notice of the substance of all matters that will be considered; the prisoner must be given an opportunity to explain or rebut any testimony or recommendations; in addition, the prisoner must be free to call witnesses in his behalf from among the employees and other prisoners; and this information should be included in the report sent back to the sentencing judge. *State v. Wolfe*, 99 Idaho 382, 582 P.2d 728 (1978).

Where defendant asserted that the procedure employed by the correctional institution's review committee in preparing its final report on defendant violated due process, the Court of Appeals declined to address the merits of the appeal because the record was devoid of any indication that the alleged defects in the procedure were ever brought to the attention of the district judge. *State v. Cortez*, 122 Idaho 439, 835 P.2d 674 (Ct. App. 1992).

Right to Counsel.

It is a denial of the constitutional right of one who is held in prison and accused of a crime to refuse counsel an opportunity to talk with him unless some one else were present to listen to what is said by the accused. Accused should be granted an opportunity to be alone with his counsel at reasonable hours. *Yung v. Coleman*, 5 F. Supp. 702 (D. Idaho 1934).

Accused should be afforded a fair opportunity to secure counsel of his own choice and have his assistance for his defense and he is entitled to that assistance at all times. *Yung v. Coleman*, 5 F. Supp. 702 (D. Idaho 1934).

Defendant's affidavit, alleging in support of his motion to set aside the information filed against him, that the committing magistrate advised the defendant that he was entitled to a preliminary examination and to counsel, and that he thereupon expressed a desire for an attorney's services, but was then advised by the magistrate that he could not have an attorney appointed for him at a preliminary hearing, but that the district court would appoint an attorney for him when the case reached that court, is insufficient to show that the defendant was denied "right to counsel" or any statutory or constitutional right at such preliminary examination. *State v. Calkins*, 63 Idaho 314, 120 P.2d 253 (1941).

Where the statute (§ 1-1508, repealed) denies to both plaintiff and defendant representation by counsel in the small claims court, due process is not denied since a plaintiff, by knowingly commencing his action therein cannot thereafter object to denial of counsel, and a defendant may avail himself of the right (under § 1-1511, repealed) to appeal to the district court and a trial de novo with

assistance of counsel. *Foster v. Walus*, 81 Idaho 452, 347 P.2d 120 (1959).

The court should inform the defendant of his right to counsel and that the court will appoint counsel for him at public expense if he is unable to employ counsel before asking defendant if he wishes to waive his right to counsel. *Bement v. State*, 91 Idaho 388, 422 P.2d 55 (1966).

The defendant should be informed of his right to counsel and that counsel would be appointed by the court at public expense if he is financially unable to employ counsel and this requirement was not obviated by the fact that he had previously been so advised by another court when arraigned upon another charge. *Pharris v. State*, 91 Idaho 456, 424 P.2d 390 (1967).

Absent a knowing and intelligent waiver, no sentence of incarceration may be imposed when counsel has been denied a defendant found needy after a review conducted in full compliance with §§ 19-851(b) and (c) and 19-854(b). *Mahler v. Birnbaum*, 95 Idaho 14, 501 P.2d 282 (1972).

This section of the Constitution does not require a trial court to appoint counsel for a defendant charged with public drunkenness, which could result in incarceration for no more than 30 days, until it is determined that the defendant will be confined if found guilty. *Mahler v. Birnbaum*, 95 Idaho 14, 501 P.2d 282 (1972).

Where defendant's trial counsel participated actively in the trial proceedings and conducted vigorous cross-examination, defendant was not denied his right to effective counsel by failure to achieve acquittal, mistakes in judgment, or errors in trial tactics. *State v. McClellan*, 96 Idaho 569, 532 P.2d 574, overruled on other grounds, *State v. Tucker*, 97 Idaho 4, 539 P.2d 556 (1975).

The standard by which questions of competent assistance of counsel should be reviewed is that a defendant is entitled to the reasonably competent assistance of an attorney acting as his diligent conscientious advocate. *State v. Tucker*, 97 Idaho 4, 539 P.2d 556 (1975).

A defendant may not indefinitely postpone trial or sentencing by continually changing counsel or arriving for hearings unrepresented by counsel. *State v. Brown*, 98 Idaho 209, 560 P.2d 880 (1977).

In the absence of a knowing, intelligent and voluntary waiver of the right to counsel, the district court may not proceed with the sentencing hearing when the defendant is not represented by counsel without some evidence or finding that the defendant has discharged his counsel in order to delay or hinder the judicial process. *State v. Brown*, 98 Idaho 209, 560 P.2d 880 (1977).

Where five months after indictment and ten

days prior to trial, the state placed a paid informant in the cell next to the defendant and the informant elicited inculpatory statements from the defendant, the state violated the defendant's right to the assistance of counsel under this section and the Sixth Amendment to the United States Constitution, since the defendant had the right to have counsel present during interrogation by a state agent. *State v. LePage*, 102 Idaho 387, 630 P.2d 674, cert. denied, 454 U.S. 1057, 102 S. Ct. 606 70 L. Ed. 2d 595 (1981). See also *LePage v. Idaho*, 851 F.2d 251 (9th Cir. 1988), cert. denied, 488 U.S. 972, 109 S. Ct. 506, 102 L. Ed. 2d 542 (1988).

Where the defendant was never entitled to appointed counsel, the trial court's appointment, followed by its sudden revocation of the defendant's counsel, did not prejudice the defendant's case, where during the six days in which the public defender represented the defendant, the public defender succeeded in having his trial continued for five weeks, providing the defendant with additional time to prepare for trial, the defendant failed to retain counsel during that five-week period, and he made no showing of indigency which would have allowed reinstatement of the public defender. *State v. Hesse*, 110 Idaho 949, 719 P.2d 1209 (1986).

A defendant is entitled to the reasonably competent assistance of an attorney. *Estes v. State*, 111 Idaho 430, 725 P.2d 135 (1986).

An accused's right to counsel does not wholly displace the judicial objective of effective court management; therefore, a request for new counsel should be examined with the rights and interests of the defendant in mind, tempered by exigencies of judicial economy. *State v. Carman*, 114 Idaho 791, 760 P.2d 1207 (Ct. App. 1988), aff'd, 116 Idaho 190, 774 P.2d 900 (1989).

The right to counsel does not necessarily include the right to counsel of one's own choosing, but it does entitle a criminal defendant to reasonably competent counsel. *State v. Carman*, 114 Idaho 791, 760 P.2d 1207 (Ct. App. 1988), aff'd, 116 Idaho 190, 774 P.2d 900 (1989).

Where the defendant did not contend that the public defender was incompetent or that an irreconcilable conflict existed between him and the public defender, the motions to vacate the trial date came shortly before the scheduled trial, the prosecution presented evidence that the victim would be highly inconvenienced by such a delay, resulting in a probable prejudice to the prosecution of the charged offense, and there was some testimony indicating the defendant may have sought the delays in an attempt to manipulate the proceedings, the trial court was not arbitrary or unreasonable in denying a continuance so the defendant could substitute private counsel for

court-appointed counsel; an accused's desire to substitute chosen representation for appointed counsel alone is not a compelling reason for delaying trial. *State v. Carman*, 114 Idaho 791, 760 P.2d 1207 (Ct. App. 1988), *aff'd*, 116 Idaho 190, 774 P.2d 900 (1989).

A defendant in a criminal prosecution has no constitutional right to representation by a lay attorney, subject to a narrow exception for parental assistance to a minor; such a defendant only has a constitutional right to obtain a licensed attorney or to represent himself. *State v. Bissett*, 116 Idaho 477, 776 P.2d 1196 (Ct. App. 1989).

When an accused person in custody has invoked his right to counsel under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), he is not subject to further interrogation until counsel has been made available to him, unless he waives his earlier request for counsel and himself initiates any dialogue. *State v. Kysar*, 116 Idaho 992, 783 P.2d 859 (1989).

Where defendant charged with attempted robbery invoked his right to counsel after being read his *Miranda* rights, and where during the police interrogation which followed his arrest, defendant refused to discuss the events of the day when the attempted robbery occurred, but he did discuss related events which occurred prior to that day, the district court was required to make a factual finding as to whether defendant *sua sponte* limited his request for counsel to the events of the day of the attempted robbery, or whether he did so upon an officer's suggestion. *State v. Brennan*, 117 Idaho 123, 785 P.2d 687 (Ct. App. 1990).

The police impermissibly abridged defendant's constitutional right to counsel by initiating a custodial interrogation in the absence of an attorney, after counsel had been appointed at her request. *State v. Valdez*, 117 Idaho 302, 787 P.2d 288 (Ct. App. 1990).

Right to counsel is triggered by the commencement of adversarial judicial proceedings upon formal charges, regardless of how those proceedings are described. *State v. Valdez*, 117 Idaho 302, 787 P.2d 288 (Ct. App. 1990).

Where the crimes with which defendant was charged, and for which she requested counsel during her initial court appearance, were the same crimes about which she was questioned during the police-initiated interrogation, her Sixth Amendment right to counsel had attached and a *Miranda* waiver procured from her was invalid and her statements were suppressible. *State v. Valdez*, 117 Idaho 302, 787 P.2d 288 (Ct. App. 1990).

Since defendant waived his *Miranda* rights, any duty imposed upon the police to contact the public defender pursuant to § 19-853 was suspended until such time as defendant in-

voked his right for counsel to be present during the custodial interrogation. *State v. Gord*, 118 Idaho 15, 794 P.2d 285 (Ct. App.), *cert. denied*, 118 Idaho 168, 795 P.2d 867 (1990).

A license required to submit to a blood alcohol concentration test under the implied consent statute has no constitutional right to consult with counsel prior to taking that test; license suspension under the implied consent statute is intended as a civil, rather than a criminal, penalty for failure to submit to an evidentiary BAC test, and under the implied consent statute, anyone who accepts the privilege of operating a motor vehicle upon Idaho's highways has consented in advance to submit to a BAC test without the right to consult with counsel. *McNeely v. State*, 119 Idaho 182, 804 P.2d 911 (Ct. App. 1990).

The legislative scheme of § 18-8002(2) — prohibiting a licensee from consulting with counsel before submitting to a blood alcohol concentration test — is rationally related to a legitimate government interest, and although it might be advantageous for a licensee to consult with an attorney prior to submitting to a BAC test, there appears to be no reason to abrogate the legislature's authority to deny this right in order to advance its objective to provide for safer highways; accordingly, defendant's substantive due process rights were not violated by refusing him the right to consult with counsel at the time he was asked to submit to the BAC test. *McNeely v. State*, 119 Idaho 182, 804 P.2d 911 (Ct. App. 1990).

A motorist does not have a right to consult counsel before taking a blood-alcohol test. *State v. Burris*, 125 Idaho 289, 869 P.2d 1384 (Ct. App. 1994).

Magistrate violated defendant's constitutional right to counsel by denying his motion for a continuance, which was made at a preliminary hearing for the purpose of allowing time for a private attorney from Colorado to prepare to represent defendant and by not advising defendant of his right to represent himself. *State v. Pratt*, 125 Idaho 546, 873 P.2d 800 (1993).

The defendant submitted no separate argument or authority showing why the Idaho Constitution afforded the right to counsel prior to the commencement of formal charges. The appellate court was not persuaded that this section should be interpreted more expansively than the federal constitution so as to provide Idaho citizens a right to counsel in pre-accusatory proceedings. *Boman v. State*, 129 Idaho 520, 927 P.2d 910 (Ct. App. 1996).

Since the accused's right to counsel does not wholly displace the judicial objective of effective court management, a request for new counsel should be examined by a trial court with the rights and interests of defendant in mind, tempered by exigencies of judicial econ-

omy. *State v. Owen*, 129 Idaho 920, 935 P.2d 183 (Ct. App. 1997).

Where the record clearly showed that defendant's counsel of record provided inadequate assistance and, as a result, her trial was substantially delayed, the district court was quite lenient in its attempt to accommodate defendant's request that certain attorneys represent her but where one of these attorneys demonstrated he was not providing her with adequate counsel and the other two did not appear when the trial commenced, file a written appearance or pleadings in the cause or communicate in any way with the court, the district court had good reason to direct public defender's office to appoint a competent attorney to represent defendant over her objection. *State v. Owen*, 129 Idaho 920, 935 P.2d 183 (Ct. App. 1997).

It is the trial court's obligation to afford defendant a full and fair opportunity to present the facts and reasons in support of his motion for substitution of counsel after having been made aware by the court of the problems involved. *State v. Peck*, 130 Idaho 711, 946 P.2d 1351 (Ct. App. 1997).

Even though defendant was ill-behaved and disruptive during court proceedings, which may have led to understandable exasperation and frustration of the district court judge as well as suspicion of defendant's motives in asking to discharge the public defender, such suspicions, even if well-founded, of intentional delay and manipulative tactics can provide no substitute for the inquiries necessary to protect a defendant's constitutional rights. *State v. Peck*, 130 Idaho 711, 946 P.2d 1351 (Ct. App. 1997).

Where record indicated defendant was not given a meaningful opportunity to justify his request for substitute counsel or exercise his right to represent himself, remand was necessary to determine defendant's motives and/or wishes. *State v. Peck*, 130 Idaho 711, 946 P.2d 1351 (Ct. App. 1997).

The right to counsel under the state constitution grants no greater protection in post-conviction applications than that afforded by the federal constitution. *Aeschliman v. State*, 132 Idaho 397, 973 P.2d 749 (Ct. App. 1999).

Defendant's and his wife, whose duty of support to defendant required her to help pay for his defense, had insufficient resources to provide payment for an attorney and other necessary expenses to defend against his criminal charges; thus, defendant was entitled to court-appointed counsel for his jury trial and the lower court was reversed. *State v. Suiter*, 138 Idaho 662, 67 P.3d 1274 (Ct. App. 2003).

Right to counsel in post-conviction proceedings was not a constitutional right, but a matter left to the discretion of the trial judge; however, Idaho Crim. R. 44.2 provides for the

mandatory appointment of counsel for post-conviction review after the imposition of the death penalty, and where the district court considered the evidence on defendant's competency and issued an order finding him competent to waive the assistance of counsel and to proceed pro se, the district court's decision finding that defendant had the capacity to waive his right to counsel was supported by substantial, competent, although conflicting evidence, and accordingly would not be disturbed. *State v. Lovelace*, — Idaho —, 90 P.3d 298 (2004).

Under the circumstances, where the district court made advisory counsel available to conduct the investigative services for which defendant claimed he needed for his defense, there was no abuse of the district court's discretion in denying defendant's request for an investigator. *State v. Lovelace*, — Idaho —, 90 P.3d 298 (2004).

—Conflict of Interest.

Where defendant's attorney brought the potential conflict of interest to the attention of the court and discussed it with the court at a formal hearing and also discussed it with defendant and at the hearing in which defendant informed the court of his desire to change his plea, the conflict of interest issue was again discussed and at this hearing defendant stated that he intended to enter a plea of guilty and was willing to proceed with representation by his assigned attorney if the attorney had no objection whereupon the attorney responded that he had no objection as long as his client did not object and the record showed that the attorney continued to represent defendant during the remaining proceedings with no objection on defendant's part, no actual conflict of interest was shown; furthermore, it is shown from the transcript of the proceeding that, if any conflict of interest was "possible," defendant validly waived any asserted challenge to it. *State v. Trefren*, 112 Idaho 812, 736 P.2d 864 (Ct. App. 1987), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

—Effective Assistance.

Although defendant's trial counsel admitted that his assistance did not fall within the range of competence regarding the wording of defendant's guilty plea to six counts of sexual exploitation by a medical care provider, defendant had not demonstrated that prejudice resulted from counsel's failure to pluralize the word "charge" in the conditional plea agreement because defendant did not show that the elimination of the first three counts on appeal would have had such a dramatic effect on his defense of the remaining three counts that that strategy realistically would have been the basis for his decision to have pleaded guilty on the last three counts. *McKeeth v.*

State, — Idaho —, 84 P.3d 575 (Ct. App. 2004).

Right to Know Nature of Charge.

Defendant has constitutional as well as statutory right to know offense with which he is charged, that he may defend against that specific charge. *State v. Swensen*, 13 Idaho 1, 81 P. 379 (1905).

Penal statute is sufficiently definite, although it may use general terms, if offense is defined so as to convey to person of ordinary intelligence an adequate description of evil intended to be prohibited. *State v. Dingman*, 37 Idaho 253, 219 P. 760 (1923).

To put one on trial without giving him, in the information, a statement of the acts constituting the offense in such language as to enable a person of common understanding to know what is intended and to let him know these facts for the first time when his trial is in progress is to deprive him of the protection the statute was designed to give him and is to deny him due process of law. *State v. McMahan*, 57 Idaho 240, 65 P.2d 156 (1937).

Indictment for burglary sufficiently states the acts constituting the offense when it charges the offense substantially in the language of the statute and describes the building entered, to fall within the rule of due process announced in the McMahan case. *State v. Vanek*, 59 Idaho 514, 84 P.2d 567 (1938).

Use of terms "lewd" and "lascivious" in defining acts punishable under § 18-6607 (now § 18-1508) did not render language uncertain, since terms used were words in common use understandable to a person of ordinary understanding. *State v. Evans*, 73 Idaho 50, 245 P.2d 788 (1952); *State v. Herr*, 97 Idaho 783, 554 P.2d 961 (1976), modified on other grounds, *State v. Tribe*, 123 Idaho 721, 852 P.2d 87 (1993).

An act does not violate this provision though couched in general terms, if the offense is defined in such a way as to convey to a person of ordinary understanding an adequate description of the offense intended to be prohibited. *State v. Evans*, 73 Idaho 50, 245 P.2d 788 (1952).

An accused is entitled to know for what offense he is being charged. *State v. Petty*, 73 Idaho 136, 248 P.2d 218, petition for writ of habeas corpus denied, 345 U.S. 938, 73 S. Ct. 834, 97 L. Ed. 1364 (1953).

An information for selling liquor without a license which does not allege the name of the purchaser fails to charge the offense with the particularity required by this section and such deficiency is more than a mere matter of form and involves a basic and substantial right of the defendant. *State v. Grady*, 89 Idaho 204, 404 P.2d 347 (1965).

Fairness requires that a criminal defendant

be tried only upon charges of which he has notice and, accordingly, the general rule has evolved that an accused person is denied due process by variance between the crime charged in a prosecutor's information and the crime upon which a judgment of conviction is entered. However, there is a well-recognized exception to this general rule in that a defendant is deemed to have presumptive notice of a lesser included offense. *State v. Gilman*, 105 Idaho 891, 673 P.2d 1085 (Ct. App. 1983).

If an offense is "included" in the crime charged, a defendant may be fairly said to have constructive notice of the alleged conduct comprising it and such notice is not defeated by the fact that the included offense may carry a heavy penalty; accordingly, information charging statutory rape of a 12-year-old girl furnished constructive notice to defendant that he might be convicted of lewd conduct as an included offense. *State v. Gilman*, 105 Idaho 891, 673 P.2d 1085 (Ct. App. 1983).

Searches and Seizures.

To render evidence of crime, obtained from person of accused, admissible against him, arrest must precede search, and latter must not be made in order to find out if one suspected of crime has committed it, with purpose of arresting him, if evidence of guilt is disclosed. *State v. Anderson*, 31 Idaho 514, 174 P. 124 (1917).

Proceeding for recovery of property or papers wrongfully taken and sought to be used in evidence against defendant is of civil nature and is no part of criminal action. *State v. Myers*, 36 Idaho 396, 211 P. 440 (1922).

Proceedings for recovery of papers wrongfully taken from accused is independent proceeding not connected with criminal case and they can not be reviewed upon appeal in main action. *State v. Myers*, 36 Idaho 396, 211 P. 440 (1922).

Refusal to suppress evidence alleged to have been obtained under illegal search warrant does not violate this provision where owner consented to search. *State v. West*, 42 Idaho 214, 245 P. 85 (1926).

Validity of warrant and search may be tested properly by motion to suppress evidence. *State v. Arregui*, 44 Idaho 43, 254 P. 788, 52 A.L.R. 463 (1927).

Where intoxication is an evidentiary element of "reckless disregard" in a homicide case arising out of the operation of a motor vehicle, the accused has no constitutional right to refuse to submit to a reasonable search and examination of his person, including an examination of his blood in the manner authorized by law. *State v. Bock*, 80 Idaho 296, 328 P.2d 1065 (1958).

Articles seized in a search of the defendant's mother's house, where the defendant

did not live and was not present, with the consent and assistance of the mother, were not the fruits of unreasonable search and seizure and were admissible in evidence. *State v. Gonzales*, 92 Idaho 152, 438 P.2d 897 (1968).

Self-Incrimination.

Defendant in criminal case who voluntarily takes stand in his own behalf may be cross-examined on facts in issue. *State v. Larkins*, 5 Idaho 200, 47 P. 945 (1897), overruled on other grounds, *State v. White*, 93 Idaho 153, 456 P.2d 797 (1969); *State v. Gruber*, 19 Idaho 692, 115 P. 1 (1911).

Proceeding under § 19-4115 for the defendant's removal from office for refusal or neglect to perform his official duties and to obtain judgment as a penalty in sum of \$500 for informer is criminal prosecution within meaning of this section providing that no person shall be compelled in a criminal case to be a witness against himself. *Daugherty v. Nagel*, 28 Idaho 302, 154 P. 375 (1915).

Provision that no person in criminal case shall be compelled to be a witness against himself is qualified by rule that one who has voluntarily made himself witness in his own behalf is subject to same rules of cross-examination that apply to other witnesses. *State v. Martinez*, 43 Idaho 180, 250 P. 239 (1926); *State v. Hargraves*, 62 Idaho 8, 107 P.2d 854 (1940).

Witness may waive privilege of refusing to testify on ground that it may incriminate him by answering questions without objection. *State v. McClurg*, 50 Idaho 762, 300 P. 898 (1931), overruled on other grounds, *State v. McMahan*, 57 Idaho 240, 65 P.2d 156 (1937).

Where accused voluntarily took stand in his own behalf, he was thereafter subject to the same rules governing the examination of other witnesses and he could be cross-examined as to all matters concerning which he testified or matters connected therewith. *State v. Mundell*, 66 Idaho 297, 158 P.2d 818 (1945).

Questions asked witness as to whether he knew reputation of defendant in criminal prosecution for truth, honesty, and integrity in community in which he resided in an attempt to impeach defendant instead of inquiring as to defendant's "general" reputation was improper as failing to conform to statutory requirements. *State v. Branch*, 66 Idaho 528, 164 P.2d 182 (1945), overruled on other grounds, *State v. Owen*, 73 Idaho 394, 253 P.2d 203 (1953).

Admission of photograph showing scratches on face of defendant taken by sheriff on day following alleged assault did not violate constitutional immunity of defendant against self-incrimination. *State v. Linebarger*, 71 Idaho 255, 232 P.2d 669 (1950).

Impeachment of defendant who testifies in his own behalf, by testimony purporting to show that defendant's reputation for truth, honesty, and integrity in the community in which he resided was bad was proper even though the defendant had not first put his reputation therefor in issue. *State v. Owen*, 73 Idaho 394, 253 P.2d 203 (1953).

Accomplice of defendant, who had been previously tried and convicted for burglary, and whose case was pending on appeal, was entitled to assert constitutional privilege against testifying in defendant's case on the ground that such testimony might incriminate him. *State v. Johnson*, 77 Idaho 1, 287 P.2d 425 (1955), cert. denied, 350 U.S. 1007, 76 S. Ct. 649, 100 L. Ed. 869 (1956).

Evidence in involuntary manslaughter prosecution of appellant's refusal to submit to a blood test was competent and admissible, for, like any other act or statement voluntarily made by him, it was competent for a jury to consider and weigh with the other evidence, and to draw from it whether the inference as to guilt or innocence may be justified thereby. *State v. Bock*, 80 Idaho 296, 328 P.2d 1065 (1958).

The provisions of this section of this article of the Constitution that "no person shall . . . be compelled in any criminal case to be a witness against himself", and of § 17 of said article "against unreasonable searches and seizures", are applicable only to testimonial compulsion and do not apply to "real" evidence produced by a reasonable examination of the body of the accused, or a reasonable search and seizure of his person and effects. *State v. Bock*, 80 Idaho 296, 328 P.2d 1065 (1958).

Defendant who takes the stand and testifies on direct examination waives the privilege against self-incrimination with respect to cross-examination on related details. *State v. Jesser*, 95 Idaho 43, 501 P.2d 727 (1972), modified on other grounds, *State v. Gums*, 126 Idaho 930, 894 P.2d 163 (Ct. App. 1995).

Defendant who takes the stand and testifies cannot on cross-examination invoke the privilege against self-incrimination where the inquiry incriminates only a co-defendant. *State v. Jesser*, 95 Idaho 43, 501 P.2d 727 (1972), modified on other grounds, *State v. Gums*, 126 Idaho 930, 894 P.2d 163 (Ct. App. 1995); *State v. Starry*, 96 Idaho 148, 525 P.2d 343 (1974).

Where defendant was represented by counsel at all stages of the proceedings against him and before he testified was reminded by the trial court of his privilege against self-incrimination and indicated that he understood this privilege and the results of waiving it, defendant was not deprived of his constitutional privilege against self-incrimination. *State v. Warner*, 97 Idaho 204, 541 P.2d 977 (1975).

There is no general, constitutional right to refuse a blood alcohol test; such a test — which produces real, rather than testimonial or communicative, evidence — does not infringe upon any privilege against self-incrimination. Neither does a blood test, unless performed with inappropriate force, offend any basic values of fairness underlying the constitutional guaranty of due process. *State v. Curtis*, 106 Idaho 483, 680 P.2d 1383 (Ct. App. 1984).

Since the defendant's statements to psychiatrist were not offered by the state as evidence against him of an aggravating factor, his rights against self-incrimination were not violated under either the federal or state Constitutions where he was not advised of his right to remain silent, or that his statements might be used at sentencing. *Gibson v. State*, 110 Idaho 631, 718 P.2d 283 (1986).

The defendant effectively waived any right against self-incrimination associated with psychiatric report and testimony, where the defendant made no objection to the psychiatric opinion being offered, and went so far as to call the psychiatrist to testify in his behalf. *Gibson v. State*, 110 Idaho 631, 718 P.2d 283 (1986).

The very fact that he was Mirandized put defendant on notice that what he said could be used against him during his sentencing hearing. *State v. Lankford*, 116 Idaho 860, 781 P.2d 197 (1989), cert. denied, 497 U.S. 1032, 110 S. Ct. 3295, 111 L. Ed. 2d 803 (1990).

Where defendant was properly informed of his rights regarding self-incrimination during a court-ordered psychiatric evaluation and he voluntarily, knowingly and intelligently waived those rights, and where defendant's attorney knew that the psychiatric examination was going to take place, the court did not err in admitting examining physician's psychiatric testimony at defendant's sentencing hearing. *State v. Lankford*, 116 Idaho 860, 781 P.2d 197 (1989), cert. denied, 497 U.S. 1032, 110 S. Ct. 3295, 111 L. Ed. 2d 803 (1990).

Because the trial court did not address the significance of what had been presented concerning defendant's fear for his life if he testified as to his drug sources, the Supreme Court of Idaho found it necessary to remand the case for reconsideration of the denial of the motion for reduction of the sentences, so that the trial court could give appropriate weight to the fear asserted by defendant. *State v. Griffin*, 122 Idaho 733, 838 P.2d 862 (1992).

Where department provided defendant with notice and opportunity to be heard as required by the safeguards of procedural due process prior to forfeiting 365 days of his accumulated goodtime credits, but rather than taking advantage of the opportunity defendant invoked his right against self-in-

crimination and remained silent, there was no violation of substantive due process and such action was not fundamentally unfair because the jury in prosecution for criminal offense of escape determined he absconded from prison out of necessity to protect himself from danger of serious bodily harm. *Dallas v. Arave*, 129 Idaho 819, 933 P.2d 108 (Ct. App. 1997).

In hearing on prison disciplinary offenses of escape and destruction of property, held while a charge against defendant for the criminal offense of escape was pending, where there was sufficient evidence other than the defendant's silence to permit the corrections department to meet its burden of showing that defendant was guilty of the disciplinary offenses, use of his silence against him at the disciplinary hearing did not violate his right to remain silent and to due process. *Dallas v. Arave*, 129 Idaho 819, 933 P.2d 108 (Ct. App. 1997).

Since inmates have no right to retained or appointed counsel at their disciplinary hearings even if they face the possibility of state prosecution for conduct involved in prison charges, magistrate did not abuse its discretion by denying defendant's petition for writ of habeas corpus, by ruling that neither his federal or state constitutional right to remain silent nor his right to due process were violated when the department used his silence against him at the prison disciplinary hearings held while a charge was pending against him for the criminal offense of escape. *Dallas v. Arave*, 129 Idaho 819, 933 P.2d 108 (Ct. App. 1997).

Because the statements were made to officers who were not present at the earlier statement and the interview took place at a different site, the statements defendant made to the officers during the second interview were the result of an intervening independent act of free will and not "fruit" of the earlier compelled statement given by defendant. *State v. Radford*, 134 Idaho 187, 998 P.2d 80 (2000).

Self-Representation.

Although a defendant has the right to reject court appointed counsel and conduct his own defense, since such a decision amounts to a waiver of the right to counsel, the defendant should be made aware of the problems inherent in self-representation so that such waiver is knowingly and intelligently made. *State v. Clayton*, 100 Idaho 896, 606 P.2d 1000 (1980).

The decision of whether to exercise the right to counsel or proceed pro se is for the defendant to make; the role of the trial court is simply to ensure that where the defendant waives the right to counsel he or she does so knowingly and intelligently. *State v. Lankford*, 116 Idaho 860, 781 P.2d 197 (1989),

cert. denied, 497 U.S. 1032, 110 S. Ct. 3295, 111 L. Ed. 2d 803 (1990).

Sentence.

Armed robbery defendant's allegation that he was sentenced differently than a codefendant based solely on his race amounted to no more than speculation where given the amount and quality of the evidence presented at sentencing the district court did not abuse its discretion in finding that defendant was a much greater danger to society than codefendant. *State v. Hodge*, 124 Idaho 927, 866 P.2d 184 (Ct. App. 1993), cert. denied, 511 U.S. 1132, 114 S. Ct. 2146, 128 L. Ed. 2d 873 (1994).

Separate Offenses.

The defendant's constitutional and statutory protection against double jeopardy was not violated when he was convicted of both burglary in the second degree and grand larceny, relating to the same general set of events, because each crime required proof of separate essential elements not required of the other; burglary was completed upon entry into a building with the intent to commit a felony while larceny, on the other hand, as defined at the time relevant to the prosecution of defendant, did not require entry into any building, but was committed by taking another's property with felonious intent. *Daugherty v. State*, 102 Idaho 782, 640 P.2d 1183 (Ct. App. 1982).

Where the defendant was charged with the rape of an 18-year-old woman, under § 18-6101, but the information made no reference to the fact that the victim was the defendant's daughter, the defendant could not be convicted of incest, under § 18-6602, since incest is not a lesser included offense of rape, and since it would violate due process to convict a defendant for a crime not charged; however, upon the setting aside of the conviction of incest, there was no constitutional barrier to a subsequent prosecution for that offense, since the defendant has never been charged with and prosecuted for the crime of incest. *State v. Madrid*, 108 Idaho 736, 702 P.2d 308 (Ct. App. 1985).

Whether a course of criminal conduct should be divided or aggregated depends on whether or not the conduct constituted separate, distinct and independent crimes; this inquiry requires consideration of the circumstances of the conduct, and consideration of the intent and objective of the actor. *State v. Major*, 111 Idaho 410, 725 P.2d 115 (1986).

Where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one is whether each provision requires proof of an additional fact which the other does not. *State*

v. Ledbetter, 118 Idaho 8, 794 P.2d 278 (Ct. App. 1990).

The only constitutional protection against prosecution for closely related crimes exists in the double jeopardy provisions of the state and federal Constitutions. *State v. Ledbetter*, 118 Idaho 8, 794 P.2d 278 (Ct. App. 1990).

The facts establishing the statutory elements of manufacturing a controlled substance are different from the facts required to prove the elements of possessing a controlled substance with intent to deliver, and separate convictions for these offenses did not violate state and federal constitutional protection against double jeopardy. *State v. Ledbetter*, 118 Idaho 8, 794 P.2d 278 (Ct. App. 1990).

Speedy Trial.

The state was not excused from affording a defendant a speedy trial by the fact that the defendant was confined in a federal penitentiary until the state had made a bona fide effort to obtain the temporary custody of the defendant for the purposes of trial. *Richerson v. State*, 91 Idaho 555, 428 P.2d 61 (1967).

Delay occasioned by prosecutor filing complaint in a court without jurisdiction was not unreasonable delay violative of rights of accused where prosecutor apparently acted in good faith and believed, and had reason to believe, such court had jurisdiction. *Olson v. State*, 92 Idaho 873, 452 P.2d 764 (1969).

Delays which are consented to by the accused constitute a waiver of the right to a speedy trial. *Olson v. State*, 92 Idaho 873, 452 P.2d 764 (1969).

Although defendant was discharged on habeas corpus because court in which complaint was filed was without jurisdiction and a new complaint was ordered filed in a court of competent jurisdiction there was no violation of the right to a speedy trial. *Olson v. State*, 92 Idaho 873, 452 P.2d 764 (1969).

If defendant can show an unreasonable delay in prosecution, prejudice is presumed. *Olson v. State*, 92 Idaho 873, 452 P.2d 764 (1969).

A delay of ten months from the time of issuance of an arrest warrant until an accused was extradited from a foreign jurisdiction did not result in a denial of the right to a speedy trial by virtue of the failure of a state to continue with a request for extradition, where the state's good-faith effort would have been denied and the net result regarding the right to a speedy trial would have been the same whether the further request was made or not. *Hadlock v. State*, 93 Idaho 915, 478 P.2d 295 (1970).

Armed robbery defendant's allegation that he was sentenced differently than a codefendant based solely on his race amounted to no more than speculation where given the amount and quality of the evidence presented

at sentencing the district court did not abuse its discretion in finding that defendant was a much greater danger to society than codefendant. *State v. Hodge*, 124 Idaho 927, 866 P.2d 184 (Ct. App. 1993), cert. denied, 511 U.S. 1132, 114 S. Ct. 2146, 128 L. Ed. 2d 873 (1994).

Where the period between complaint and trial was some 14 months, but any prejudice from the delay was minimal, the delay was not purposeful on the part of the state, and the defendant did not assert his right until the end of the 14 months, there was no violation of his right to a speedy trial. *State v. Lindsay*, 96 Idaho 474, 531 P.2d 236 (1975).

When a criminal defendant makes a prima facie showing that his right to a speedy trial is violated under § 19-3501, the burden is on the state to show "good cause" for the delay, just as the primary responsibility for bringing a case to trial is upon the state. *State v. Hobson*, 99 Idaho 200, 579 P.2d 697 (1978).

In deciding whether a defendant has been denied a speedy trial contrary to this section, consideration should be given to the prejudice to the defendant which results from the delay; accordingly, defendant's right to a speedy trial was not denied where the nine-month delay between the filing of the "John Doe" complaint and defendant's arrest was caused by the inability of the police to determine the defendant's full name or location, and defendant testified that he was not aware of any defense witnesses who had died or moved away and that the presentation of his defense would not be affected by the delay, and where the length of delay was not shown to be actively or presumptively prejudicial to the defendant. *State v. Holtslander*, 102 Idaho 306, 629 P.2d 702 (1981).

The trial court erred in applying a "best efforts" standard to the police in failing to discover the defendant's true name or location after a "John Doe" warrant was issued for his arrest for the sale of marijuana, thus, the nine month delay between the filing of the complaint against defendant and his arrest did not deny him a speedy trial contrary to this section when a "diligent, good faith effort" standard is applied to the efforts of the police in determining the reason for the delay factor. *State v. Holtslander*, 102 Idaho 306, 629 P.2d 702 (1981).

Where a trial court is determining whether the defendant has been denied a speedy trial contrary to this section, it must balance four factors: length of delay, reasons for the delay, the accused's assertion of his right, and the prejudice to the accused occasioned by the delay. *State v. Holtslander*, 102 Idaho 306, 629 P.2d 702 (1981).

The action of the legislature in repealing former § 1-706, governing terms of court, and the action of the Supreme Court in promul-

gating I.R.C.P. 77(a), abolishing terms of court, precludes determining the right to a speedy trial by reference to terms of court for cases filed after the effective date (March 31, 1975) of the repeal of § 1-706. *State v. Carter*, 103 Idaho 917, 655 P.2d 434 (1981), rev'd on other grounds, 108 Idaho 788, 702 P.2d 826 (1985).

Where there was a seven-and-one-half-month delay between the date the criminal complaint was issued and the date of trial, but there was no indication that prosecution engaged in dilatory tactics and delay caused by improper jury selection followed from defendant's motion to dismiss, and where no prejudice was shown, defendant's right to speedy trial was not violated. *State v. Carter*, 103 Idaho 917, 655 P.2d 434 (1981), rev'd on other grounds, 108 Idaho 788, 702 P.2d 826 (1985).

The right to speedy trial is guaranteed by this section, and § 19-106 which merely restates the protection granted by this section. Both are comparable to that protection provided by the U.S. Const., Amendments. 6 and 14. *State v. Carter*, 103 Idaho 917, 655 P.2d 434 (1981), rev'd on other grounds, 108 Idaho 788, 702 P.2d 826 (1985).

A seven and one-half month delay between the defendant's first trial, which ended in a mistrial, and his second trial did not constitute a denial of the defendant's right to a speedy trial, where more than six months of the delay was attributable to the defendant's refusal to answer the questions asked of him on cross-examination during his first trial and the ensuing contempt and commitment proceeding and order issued against the defendant, where the defendant did not assert his right to a speedy trial until just two and one-half weeks prior to his second trial, and where the defendant failed to allege or show that he was prejudiced by the delay. *State v. Talmage*, 104 Idaho 249, 658 P.2d 920 (1983).

Delays in bringing a defendant to trial caused or consented to by the defendant are considered to constitute waiver of the right to be tried within the time affixed by statute or required by the Constitution. *State v. Talmage*, 104 Idaho 249, 658 P.2d 920 (1983).

The factors to be considered in determining whether an accused has been denied a speedy trial are: (1) the length of delay; (2) the reason(s) for delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant occasioned by the delay. *State v. Talmage*, 104 Idaho 249, 658 P.2d 920 (1983).

Time absorbed by a prosecutor's appeal from a magistrate's dismissal of charges is germane to a speedy trial claim. *State v. Fairchild*, 108 Idaho 225, 697 P.2d 1239 (Ct. App. 1985).

Under the speedy trial provision of this section, the time of delay is measured from

the point where formal charges are filed or when the defendant is arrested, whichever occurs first. *State v. Stuart*, 110 Idaho 163, 715 P.2d 833 (1985).

Where three months of the delay of trial were consumed by the defendant's stay in the security medical facility undergoing psychiatric evaluations, where nearly all of the numerous motions filed in the case, which presumably were the reasons for the delay in trial setting, were filed by the defendant, where the defendant never urged his right until an 11-month delay had occurred, and where there was no possible prejudice caused by the delay, and in fact the delay was most probably in the defendant's best interest, there was no denial of the defendant's right to a speedy trial. *State v. Stuart*, 110 Idaho 163, 715 P.2d 833 (1985). See *State v. Tribe*, 123 Idaho 721, 852 P.2d 87 (1993).

Although the Supreme Court has held that the state constitutional right to a speedy trial under this section is not necessarily identical to the federal constitutional right, the Supreme Court nevertheless utilizes the *Barker-Wingo* balancing test to determine whether the state Constitution speedy trial right has been violated. The test considers the length of the delay, the reasons for the delay, the accused's assertion of his right, and the prejudice occasioned by the delay. *State v. Dillard*, 110 Idaho 834, 718 P.2d 1272 (Ct. App.), cert. denied, 479 U.S. 887, 107 S. Ct. 283, 93 L. Ed. 2d 258 (1986).

When an alleged violation of the right to speedy trial is in issue, the court must look first to determine if § 19-3501 has been abridged; if § 19-3501 is applicable and there is no "good cause" for the delay or the trial was not postponed at the defendant's request, then the charge against the accused must be dismissed and the inquiry is at an end. However, if § 19-3501 is not implicated, then the court must next determine whether the constitutional provisions — both state and federal — relating to speedy trial have been violated. *State v. Dillard*, 110 Idaho 834, 718 P.2d 1272 (Ct. App.), cert. denied, 479 U.S. 887, 107 S. Ct. 283, 93 L. Ed. 2d 258 (1986).

The defendant was not deprived of his right to a speedy trial under either the federal constitution or this section where there was a 14-month interval between the filing of a criminal charge and the date of the trial, but where the state acted with reasonable diligence and did not impermissibly prolong the proceeding and the defendant presented no evidence or argument that his defense had been impaired in any way as a result of the passage of time. *State v. Dillard*, 110 Idaho 834, 718 P.2d 1272 (Ct. App.), cert. denied, 479 U.S. 887, 107 S. Ct. 283, 93 L. Ed. 2d 258 (1986).

A 14-month interval between the filing of a

criminal charge and the date of trial is sufficient to trigger a constitutional speedy trial inquiry; however, such a time period is not per se a denial of the right. *State v. Dillard*, 110 Idaho 834, 718 P.2d 1272 (Ct. App.), cert. denied, 479 U.S. 887, 107 S. Ct. 283, 93 L. Ed. 2d 258 (1986).

Where the defendant's trial on the aggravated assault charge was delayed seven and one-half months, the defendant was not deprived of his right to a speedy trial under either the federal or state Constitutions, because the delay stemmed from the defendant's failure to request a preliminary hearing after he had been advised by the magistrate that no hearing would be held unless he requested it, the defendant was released on his own recognizance throughout the prosecution, and the defendant failed to show that he diligently exercised his right to utilize compulsory process to obtain the appearance of a favorable witness. *State v. Mason*, 111 Idaho 660, 726 P.2d 772 (Ct. App. 1986).

Under this section, the time of delay of the trial is measured from the point when formal charges are filed or when the defendant is arrested, whichever occurs first. *State v. Mason*, 111 Idaho 660, 726 P.2d 772 (Ct. App. 1986).

The district court correctly concluded that an evidentiary hearing was not necessary to resolve the speedy trial issue, where the defendant waived his right to a speedy trial and the defendant was free on bond from shortly after his arrest until after his conviction for the second time. *Estes v. State*, 111 Idaho 430, 725 P.2d 135 (1986).

Where the interval between the filing of information and the defendant's filing of his motion to dismiss for lack of speedy trial was approximately eight months and was sufficient to trigger an inquiry into whether a speedy trial has been denied, the eight-month period is not in itself so excessive as to outweigh other balancing factors. *State v. Johnson*, 119 Idaho 56, 803 P.2d 557 (Ct. App. 1990).

In determining whether there has been a denial of a speedy trial, where the defendant was arrested for unknown crimes in another county, subsequently left the state and did not notify his own attorney or the prosecutor of his departure or whereabouts, the state met its burden by showing that the prosecution made a reasonable endeavor to locate the defendant, to take action to procure his return, and to continue the prosecution as soon as he was located, and the reasons for the delay in this case weighed more heavily against the defendant and were more properly attributable to him than to the state. *State v. Johnson*, 119 Idaho 56, 803 P.2d 557 (Ct. App. 1990).

A probationer asserting speedy trial rights may be able to show a violation of his right to due process under the state and federal constitutions if he can show that the state failed to act with due diligence, causing unreasonable delay. However, defendant showed neither that the state failed to act with due diligence, nor that the delay was "unreasonable." *State v. Wavrick*, 123 Idaho 83, 844 P.2d 712 (Ct. App. 1992).

Idaho's statutory constitutional rights to speedy trial do not apply to probation revocation proceedings. *State v. Wavrick*, 123 Idaho 83, 844 P.2d 712 (Ct. App. 1992).

Where good cause had been shown for the 38-day delay between the time the information was filed and the hearing for the motion to dismiss, defendant's motion to dismiss for failure to timely prosecute was properly denied. *State v. Lund*, 124 Idaho 290, 858 P.2d 829 (Ct. App. 1993).

Defendant, who agreed to plead guilty to a lesser offense midway through his trial that had been twice vacated and occurred eleven months after his being charged with rape, did not have his right to a speedy trial denied because his valid guilty plea, voluntarily and understandingly given, waived both the right to a speedy trial as well as the consideration of the denial of such right as fundamental error which could be raised for the first time on appeal. *State v. Garcia*, 126 Idaho 836, 892 P.2d 903 (Ct. App. 1995).

Section 19-106 simply restates the speedy trial protection granted by Const., Art. I, § 13 and therefore affords no additional safeguard additional to that provided by Const., Art. I, § 13. *State v. Brashier*, 127 Idaho 730, 905 P.2d 1039 (Ct. App. 1995).

Under the total circumstances of the case, a defendant was not prejudiced where it took 13 months to bring his case to trial. *State v. Rodriguez-Perez*, 129 Idaho 29, 921 P.2d 206 (Ct. App. 1996).

Where defendant's request for a substitute attorney made it necessary for the trial court to postpone the trial to prevent defendant from being prejudiced by his new attorney's inability to prepare for the earlier trial date, that postponement could not be attributed to the State; thus this four-month delay negated defendant's speedy trial argument. *State v. Reutzel*, 130 Idaho 88, 936 P.2d 1330 (Ct. App. 1997).

Unlike the statutory speedy trial guarantee, which measures timeliness from the date of filing the information or indictment, the constitutional guarantees apply from the date when either formal charges are filed or the defendant is arrested, whichever occurs first. *State v. Hernandez*, 133 Idaho 576, 990 P.2d 742 (Ct. App. 1999).

The district court did not err in finding no constitutional violation of the defendant's

right to a speedy trial where, although the fact that he was incarcerated throughout the nine month pretrial period was problematical, it did not by itself establish such prejudice from the state-engendered delay that dismissal was compelled, since there was no prejudice to the presentation of the defense and the delay attributable to the state was not extremely egregious. *State v. Hernandez*, 133 Idaho 576, 990 P.2d 742 (Ct. App. 1999).

Four factors used in analyzing Sixth Amendment speedy trial cases — length of delay, reason for delay, assertion of right, and prejudice — were applied in determining whether state constitutional right had been violated; there was no violation where, although the delay was long, it occurred for good cause, defendant failed to assert his right until right before trial, and defendant was free on bond throughout the delay period. *State v. Young*, 136 Idaho 113, 29 P.3d 949 (2001).

Standard of Evidence.

In this case, the "some evidence standard" as set by the United States Supreme Court in *Superintendent, Mass. Correctional Inst. v. Hill*, 472 U.S. 445, 105 S. Ct. 2768, 86 L. Ed. 2d 356 (1985) whereby the Supreme Court provided that a hearing officer's decision is to be upheld if supported by some evidence, was appropriate. *Cootz v. State*, 117 Idaho 38, 785 P.2d 163 (1989).

Requiring that medical malpractice plaintiffs establish a violation of the local standard of medical care as part of their prima facie case does not violate the due process requirements of either the Idaho or United States Constitutions. *Gubler ex rel. Gubler v. Brydon*, 125 Idaho 107, 867 P.2d 981 (1994).

Jury instruction that permitted conviction upon evidence proving guilt to a moral certainty rather than proof beyond a reasonable doubt was proper where instruction given defining "reasonable doubt" had been approved by the Idaho Supreme Court. *State v. Owen*, 129 Idaho 920, 935 P.2d 183 (Ct. App. 1997).

Taking of Private Property.

Since there is no taking of utility property in requiring relocation of lines because of change in highway there could be no taking of property without due process of law. *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959).

Impairment of access to residential property by raising the street level eight inches constitutes a taking of private property without due process of law when just compensation is denied. *Farris v. City of Twin Falls*, 81 Idaho 583, 347 P.2d 996 (1959).

Constitutional provisions under this section and § 14 of our state constitution prohibit taking of private property for public use

without just compensation. *Roark v. City of Caldwell*, 87 Idaho 557, 394 P.2d 641 (1964).

Landowner has property right in reasonable use of airspace above his land which cannot be "taken" for public use without just compensation. *Roark v. City of Caldwell*, 87 Idaho 557, 394 P.2d 641 (1964).

Provisions of city ordinance restricting height of structures on plaintiffs' property near an airport and limiting use of land constitute taking of private property for public use; therefore, no compensation having been provided, the ordinance was unconstitutional. *Roark v. City of Caldwell*, 87 Idaho 557, 394 P.2d 641 (1964).

Inclusion of certain buildings which were not deteriorated in urban renewal plan area does not authorize a taking for other than a public purpose where a predominance of the structures and other improvements are deteriorating and defective. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Where permit, bonding, and restoration requirements of dredge and placer mining protection act were reasonably related to the enactment's purpose in protecting state lands and watercourses from pollution or destruction and in preserving these resources for the enjoyment and benefit of all people, the provisions were within the legitimate police powers of the state and thus did not constitute a taking of private property without just compensation. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

The filing of a lien under the mechanics' and materialmen's lien statutes, §§ 45-501 — 45-517, is not a violation of due process since there is no taking of a significant property interest. *Kloos v. Jacobson*, 30 Bankr. 965 (Bankr. D. Idaho 1983).

Taxes and Assessments.

The imposition of additional costs and burdens necessary to supply owners of new lands with water for such lands, upon the owners of the old lands, without their consent, would be an invasion of their constitutionally protected property rights. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

The due process clause of both the federal and state constitutions was not violated by the imposition of the motor fuel tax for gasoline for use in Idaho sold to a federal agency where delivery was taken in a foreign state and subsequently transported to Idaho for use in vehicles owned by the federal government. *American Oil Co. v. Neill*, 86 Idaho 7, 383 P.2d 350 (1963), rev'd, 380 U.S. 451, 85 S. Ct. 1130, 14 L. Ed. 2d 1 (1965).

The development and conservation of the state's water resources is a governmental activity properly funded by tax revenues be-

cause it has a public purpose which benefits the community as a whole and relates directly to the functions of the government. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

There was no constitutional violation where the common interest created in a viable water delivery system and the costs of maintaining a canal system served as a rational basis for assessments, and where a meaningful opportunity to be heard and contest the amount due was provided. *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 982 P.2d 917 (1999).

Trespassing Animals.

A statute relating to taking up of trespassing hogs is not repugant to this section. *Fall Creek Sheep Co. v. Walton*, 24 Idaho 760, 136 P. 438, 1915C Ann. Cas. 1252 (1913).

Trial Without Delay.

Defendant convicted of crime in probate court is entitled to a speedy trial upon appeal to district court. *State v. Eikelberger*, 71 Idaho 282, 230 P.2d 696 (1950).

Right of speedy trial guaranteed by this section is for the purpose of preventing oppressive delay in trial of defendant, and restraint of liberty of defendant by arbitrary official action. *State v. Eikelberger*, 71 Idaho 282, 230 P.2d 696 (1951).

Common-law right to a speedy trial in a criminal case is the basis of provision for a speedy trial placed in this section of the Constitution. *Ellenwood v. Cramer*, 75 Idaho 338, 272 P.2d 702 (1954).

Term "speedy trial" is relative and must be considered, construed, and applied under the surrounding facts and circumstances of each case. *Ellenwood v. Cramer*, 75 Idaho 338, 272 P.2d 702 (1954).

Where defendant was held to answer during spring term, but no information was filed until November 21 during fall term, and trial of case was continued until next term of court on request of defendant, there was a waiver of the right to a speedy trial. *Ellenwood v. Cramer*, 75 Idaho 338, 272 P.2d 702 (1954).

Where defendant was bound over on a charge of grand larceny during the term following his arrest and an information filed against him during the same term and defendant moved for dismissal of the information at the opening of the next term on the ground that he had been denied a speedy trial, the trial judge properly denied such motion, the state having until the end of the term during which motion to dismiss was filed to bring defendant to trial. *Schrom v. Cramer*, 76 Idaho 1, 275 P.2d 979 (1954).

Under constitutional provisions providing for a speedy trial, "speedy trial," being of indeterminate meaning, is subject to construction by the legislature which must be

read in connection with the constitutional provision and be given effect as a legislative definition of what constitutes a "speedy trial." *Schrom v. Cramer*, 76 Idaho 1, 275 P.2d 979 (1954).

Provision entitling defendant to a speedy trial is directed against arbitrary and oppressive delays; but if there is good cause to continue the trial of the case beyond the next term of the court requirement has been met. *State v. Hopple*, 83 Idaho 55, 357 P.2d 656 (1960).

If the dismissal and renewal of the prosecution were to be regarded as postponement, it was for "good cause" and "sufficient reason" and was therefore authorized, since the absence of a material and essential witness is "good cause." *State v. Goodmiller*, 86 Idaho 233, 386 P.2d 365 (1963).

Section 19-3502 was a part of the Criminal Practice Act of 1864 and therefore its application is not to be regarded as violative of the constitutional right to a speedy trial. *State v. Goodmiller*, 86 Idaho 233, 386 P.2d 365 (1963).

The dismissal of the information and release of defendant's bail was not a bar to another prosecution commenced within three years after the commission of the offense. *State v. Goodmiller*, 86 Idaho 233, 386 P.2d 365 (1963).

Where defendant was tried at the first term commencing after the filing of the new information, his constitutional right was accorded to him for speedy trial. *State v. Goodmiller*, 86 Idaho 233, 386 P.2d 365 (1963).

Where after dismissal for defect in process in a criminal case the prisoner was again arrested on sufficient proof and committed by legal process for the same offense in first degree burglary under new complaint at next succeeding term of court, denial of right to speedy trial was not involved. *State v. Stewart*, 87 Idaho 210, 392 P.2d 180 (1964).

Where mere defect in form of warrant of commitment for alleged first degree burglary resulted in discharge of defendant upon habeas corpus order, subsequent prosecution, following rearrest and commitment for same crime less than a month after writ was made permanent, was not improper and was no denial of defendant's right to a speedy trial. *State v. Stewart*, 87 Idaho 210, 392 P.2d 180 (1964).

Where complaint for issuing fraudulent checks was filed March 6, 1964, a hold order was sent to the state penitentiary, where defendant had been returned for violation of probation, on July 24, 1964, defendant requested a speedy trial on September 29, 1964, and December 18, 1964 he was delivered to the county sheriff and arrested February 24, 1965, a preliminary hearing was held March 4, 1965, and defendant petitioned for a writ of

habeas corpus on May 4, 1965, defendant was not accorded a speedy trial within the guarantees of this section. *Jacobson v. Winter*, 91 Idaho 11, 415 P.2d 297 (1966).

Uncertainty.

Section 18-2109, enacted to prevent and punish malicious injury and cruelty to animals, is not so indefinite and uncertain as to render it unconstitutional. *State v. Groseclose*, 67 Idaho 71, 171 P.2d 863 (1946).

A criminal statute must be sufficiently certain to show that the legislature intended to prohibit and punish, otherwise it is void for uncertainty. *Lewiston v. Mathewson*, 78 Idaho 347, 303 P.2d 680 (1956).

Where a single term in a city ordinance, which made it a misdemeanor for a person to be intoxicated while in a private motor vehicle located in a public place, had the effect of introducing the elements of vagueness, uncertainty, and overbreadth into the ordinance, and where that term was not essential to the purpose and completeness of the ordinance, the constitutionally infirm term was stricken so that the remainder of the ordinance would fulfill the requirements of certainty and definiteness. *Voyles v. City of Nampa*, 97 Idaho 597, 548 P.2d 1217 (1976).

Due process requires that a statute defining a crime be sufficiently explicit so all persons may know what conduct on their part will subject them to its penalties. However, in determining the sufficiency of a statute, the words of the questioned statute should not be evaluated in the abstract but should be considered with reference to the particular conduct of the defendant. *State v. Lenz*, 103 Idaho 632, 651 P.2d 566 (Ct. App. 1982).

Unemployment Compensation.

Section 72-1366 did not unconstitutionally inhibit the right to travel of a claimant for unemployment compensation who terminated her previous employment in order to accompany her husband in a move to another locality. *Pyeatt v. Idaho State Univ.*, 98 Idaho 424, 565 P.2d 1381 (1977).

Waiver.

The requirement that correctional officials describe in their disciplinary decisions, the evidence upon which they relied, was not waived by defendant who failed to present evidence or argue the point before the magistrate hearing his writ of habeas corpus. *Cootz v. State*, 117 Idaho 38, 785 P.2d 163 (1989).

When a defendant enters a guilty plea, a waiver of his rights will not be valid unless the record, on the whole, indicates that such a plea was knowingly, intelligently and voluntarily made, and where the record revealed that when defendant appeared for his initial arraignment the district judge informed him of the waiver of his rights if he pled guilty, and

that defendant acknowledged that he understood these rights, under these circumstances it cannot be held that defendant was uninformed regarding his Sixth Amendment rights. *Russell v. State*, 118 Idaho 65, 794 P.2d 654 (Ct. App. 1990).

Waiver of Counsel.

Appellate court could not say that the district court had any duty to conduct additional inquiries into defendant's waiver of counsel where the trial court conducted a detailed inquiry of defendant relating to his understanding of the criminal process, his competency to waive his right to counsel, and his ability to understand the nature of the proceedings which had been filed against him by the State. Defendant had 13 years of education, he had been involved in several court proceedings, he had been in a contested hearing before, the district court informed him of the hazards of self-representation and advised him not to give up appointed counsel, however, defendant insisted that he did not want to be represented by a lawyer and that he was not comfortable with lawyers. *State v. Lovelace*, — Idaho —, 90 P.3d 298 (2004).

Warehouse Rates.

Commission has the power to require warehouse companies to reconcile differences in accounts presented by them in hearing on petition for increased rates, and it can require them to justify expenses charged against income from the warehouse, but it cannot deny their right to a decision on their petition on the sole ground of want or absence of a uniform system of accounts, which the commission is charged to establish. *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949).

Warehouse companies are entitled to a reasonable return upon their investment from warehouse operations, regardless of fact that part of their income may come from private business instead of public, and commission cannot wait until they establish a uniform system of accounting, but must make a decision now upon most accurate information available from existing facts and records. *Lewiston Grain Growers, Inc. v. Rooke*, 69 Idaho 374, 207 P.2d 1028 (1949).

Wire Recordings.

Wire recording of examination of defendant charged with murder conducted in office of prosecutor was admissible in evidence. *State v. Spencer*, 74 Idaho 173, 258 P.2d 1147 (1953).

Opinions of Attorney General. Except where the Constitution limits the authority of the legislature with respect to the sale of state property as with respect to endowment and trust property, the legislature may authorize the sale of state buildings and may place the

proceeds thereof in the general fund. OAG 83-2.

It is constitutional under the First and Fourteenth Amendments of the United States Constitution, Const., Article I, §§ 1 and 9, and this section to restrict the use of the word "accountant" and other labels or titles to individuals who have been certified and licensed by the state Board of Accountancy, as required by § 54-201 et seq. OAG 86-1.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 281; Vol. II, p. 1595.

16C C.J.S., Constitutional Law, §§ 992-1114.

Double jeopardy by revocation, without notice and hearing, of probation or suspension of sentence, parole, or conditional pardon. 29 A.L.R.2d 1090.

Discharge of accused for holding him excessive time without trial as bar to subsequent prosecution for same offense. 50 A.L.R.2d 943.

Waiver or loss of accused's right to speedy trial. 57 A.L.R.2d 302.

Conviction of lesser offense as bar to prosecution for greater on new trial. 61 A.L.R.2d 1141.

Conviction from which appeal is pending as bar to another prosecution for same offense under rule against double jeopardy. 61 A.L.R.2d 1224.

As basis of claim of double jeopardy in attempted subsequent prosecution for same offense. 75 A.L.R.2d 683.

Effect as double jeopardy of court's grant of new trial on own motion in criminal case. 85 A.L.R.2d 493.

Delay between filing of complaint or other charge and arrest of accused as violation of right to speedy trial. 85 A.L.R.2d 980.

Court's right, in imposing sentence, to hear evidence of, or to consider, other offenses committed by defendant as violating due process of law in denying the right to be confronted by or to cross-examine adverse witnesses. 96 A.L.R.2d 796.

Subsequent trial, after stopping former trial to try accused for greater offense, as constituting double jeopardy. 6 A.L.R.3d 905.

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Acquittal in criminal proceeding as precluding revocation of probation on same charge. 76 A.L.R.3d 564.

Acquittal in criminal proceeding as precluding revocation of parole on same charge. 76 A.L.R.3d 578.

Propriety of trial court's declaration of mistrial or discharge of jury, without accused's consent, on ground of prosecution's disclosure of prejudicial matter, or making prejudicial remarks in presence of, jury. 77 A.L.R.3d 1143.

Appeal by state of order granting new trial in criminal case. 95 A.L.R.3d 596.

Failure of state prosecutor to disclose exculpatory photographic evidence as violating due process. 93 A.L.R.5th 527.

Failure of state prosecutor to disclose fingerprint evidence as violating due process. 94 A.L.R.5th 393.

Adequacy of defense counsel's representation of criminal client — conduct at trial regarding issues of insanity. 95 A.L.R.5th 125.

Failure of state prosecutor to disclose exculpatory ballistic evidence as violating due process. 95 A.L.R.5th 611.

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Sufficiency of showing that voluntariness of confession or admission was affected by alcohol or other drugs — Drugs or narcotics administered as part of medical treatment and drugs or intoxicants administered by the police. 96 A.L.R.5th 523.

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bar to prosecution in state court for state offense based on same facts — Modern view. 97 A.L.R.5th 201.

Failure of state prosecutor to disclose exculpatory medical reports and tests as violating due process. 101 A.L.R.5th 187.

Validity and efficacy of minor's waiver of right to counsel — cases decided since application of *Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). 101 A.L.R.5th 351.

Failure of state prosecutor to disclose pretrial statement made by crime victim as violating due process. 102 A.L.R.5th 327.

Actions brought under 42 U.S.C.A. §§ 1981-1983 for racial discrimination — Supreme Court cases. 164 A.L.R. Fed. 483.

Equal protection and due process clause challenges based on racial discrimination — Supreme Court cases. 172 A.L.R. Fed. 1.

Equal protection and due process clause challenges based on sex discrimination — Supreme Court cases. 178 A.L.R. Fed. 25.

Right of enemy combatant to counsel. 184 A.L.R. Fed. 527.

§ 14. Right of eminent domain. — The necessary use of lands for the construction of reservoirs or storage basins, for the purpose of irrigation, or for rights of way for the construction of canals, ditches, flumes or pipes, to convey water to the place of use for any useful, beneficial or necessary purpose, or for drainage; or for the drainage of mines, or the working thereof, by means of roads, railroads, tramways, cuts, tunnels, shafts, hoisting works, dumps, or other necessary means to their complete development, or any other use necessary to the complete development of the material resources of the state, or the preservation of the health of its inhabitants, is hereby declared to be a public use, and subject to the regulation and control of the state.

Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor.

Comp. provisions: Cal. Art. 1, § 19.

Mont. Art. 2, § 29.

Utah. Art. 1, § 22.

Wash. Art. 1, § 16.

Wyo. Art. 1, §§ 32, 33.

Cited in: *Baillie v. Larson*, 138 F. 177 (C.C.D. Idaho 1905); *Burley v. United States*, 179 F. 1 (9th Cir. 1910); *Idaho Indep. Tel. Co. v. Oregon Short Line R.R.*, 8 Idaho 175, 67 P. 318 (1901); *Coeur d'Alene Mining Co. v. Woods*, 15 Idaho 26, 96 P. 210 (1908); *Boise Valley Constr. Co. v. Kroeger*, 17 Idaho 384, 105 P. 1070, 28 L.R.A. (n.s.) 968 (1909); *Mashburn v. St. Joe Imp. Co.*, 19 Idaho 30, 113 P. 92, 35 L.R.A. (n.s.) 824 (1910); *Montpelier Milling Co. v. Montpelier*, 19 Idaho 212, 113 P. 741 (1911); *Big Lost River Irrigation Co. v. Davidson*, 21 Idaho 160, 121 P. 88 (1912); *Murray v. Public Utils. Comm'n*, 27

Idaho 603, 150 P. 47, 1915F P.U.R. 436, 1916F L.R.A. 756 (1915); *Blackwell Lumber Co. v. Empire Mill Co.*, 29 Idaho 236, 158 P. 792 (1916); *Zezi v. Lightfoot*, 57 Idaho 707, 68 P.2d 50 (1937); *Foster's, Inc. v. Boise City*, 63 Idaho 201, 118 P.2d 721 (1941); *Moerder v. City of Moscow*, 78 Idaho 246, 300 P.2d 808 (1956); *Winther v. Village of Weippe*, 91 Idaho 798, 430 P.2d 689 (1967); *Cambridge Tel. Co. v. Pine Tel. Sys.*, 109 Idaho 875, 712 P.2d 576 (1985); *Erickson v. Amoth*, 112 Idaho 1122, 739 P.2d 421 (Ct. App. 1987); *Roell v. Boise City*, 134 Idaho 214, 999 P.2d 251 (2000).

ANALYSIS

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Access to Property.

The destruction or impairment of the right of business access to their property constitutes a "taking of property" whether accompanied by an actual taking of physical property or not, and just compensation must be paid therefor. A summary judgment dismissing landowner's action for impairment and taking of highway access was erroneous. *Mabe v. State*, 83 Idaho 222, 360 P.2d 799 (1961).

Since § 7-703 of the condemnation statute includes land owned by state in private property subject to taking, the state thereby has given its consent to be sued in condemnation proceedings, and district court had jurisdiction to entertain private individual's action for easement right of way over state land. *Petersen v. State*, 87 Idaho 361, 393 P.2d 585 (1964).

The fact that the plaintiffs' existing access was by way of a license, rather than an easement across the land of other adjoining property owners, does not destroy either the evidence or the finding of the court that alternative access routes existed nor the trial court's holding based thereon that necessity for condemnation did not exist. *Erickson v. Amoth*, 99 Idaho 907, 591 P.2d 1074 (1978).

Where landowners specifically alleged that the condemnors had alternative means of access and produced evidence of such alternative means of access, including one road then in use by the condemnors pursuant to a license agreement it was then incumbent upon the condemnors to prove that the alternative means of access were not available to them or that such means of access were not reason-

ably adequate or sufficient for their purposes. *Erickson v. Amoth*, 99 Idaho 907, 591 P.2d 1074 (1978).

Attorney's Fees.

Attorney's fees and costs are allowable, in eminent domain proceedings, under I.R.C.P. 54(d)(1), however, such fees and costs are not mandatory as within the definition of just compensation. *Ada County Hwy. Dist. ex rel. Fairbanks v. Acarrequi*, 105 Idaho 873, 673 P.2d 1067 (1983).

The basis for the discretionary award of attorney fees to the condemnee without a showing and finding that the action was brought frivolously or unreasonably is that, otherwise, a condemnee who is determined by the trial court to be a prevailing party will be deprived of part of the just compensation to which he is entitled. *State ex rel. Smith v. Jardine*, 130 Idaho 318, 940 P.2d 1137 (1997).

Damages or Compensation.

Provisions of § 7-717, for appointment of commissioners to assess damages that defendant will sustain by reason of condemnation and appropriation of his property, and for payment of sum so assessed to defendant, or, in case of his refusal to accept same, its being paid into court to abide result of action, and for plaintiff thereupon to enter upon and take possession of property pending final hearing and determination of proceeding, are not in conflict with this section. *Portneuf Irrigation Co. v. Budge*, 16 Idaho 116, 100 P. 1046, 18 Ann. Cas. 674 (1909).

The land owner is getting just what Constitution guarantees him whenever he is tendered and accepts award made by commissioners. *Pyle v. Woods*, 18 Idaho 674, 111 P. 746 (1910).

While our constitutional provision omits words "or damaged," which are found in many constitutions immediately following word "taken" as it occurs in our Constitution, omission does not prevent legislature from imposing condition to that effect by statutory enactment. *Idaho-Western R.R. v. Columbia Conference Synod*, 20 Idaho 568, 119 P. 60, 38 L.R.A. (n.s.) 497 (1911). See *Crane v. Harrison*, 40 Idaho 229, 232 P. 578, 38 A.L.R. 15 (1925), overruled on other grounds, *Hughes v. State*, 80 Idaho 286, 328 P.2d 397 (1958).

Method of organization of irrigation district and assessment of lands therein according to benefits is no violation of constitutional provision of taking property without just compensation. *American Falls Reservoir Dist. v. Thrall*, 39 Idaho 105, 228 P. 236 (1924).

Condemnor must pay just compensation for property taken and all costs. *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931).

The defendant in a condemnation suit is entitled to be paid in money for the value of

the land taken, and for the damage to the land not taken because of the severance. *State ex rel. Rich v. Dunclick, Inc.*, 77 Idaho 45, 286 P.2d 1112 (1955).

The state in a condemnation proceeding for taking of land of manufacturing concern used as storage by the defendant was not entitled to contend that there was available to the defendant for storage other state owned land, since the defendant was entitled to cash for the damage sustained by it and was not required to take other land in exchange. *State ex rel. Rich v. Dunclick, Inc.*, 77 Idaho 45, 286 P.2d 1112 (1955).

The condemnee should be allowed interest upon the compensation and damages awarded from the time the condemner either takes possession, or becomes entitled to possession, of the property. *Independent Sch. Dist. v. C.B. Lauch Constr. Co.*, 78 Idaho 485, 305 P.2d 1077 (1957).

In an eminent domain proceeding it is the mandatory duty of the court, jury or referee to assess the value of the property sought to be condemned, and if such property constitutes a part of a larger parcel, the damages which will accrue to the portion not sought to be condemned, by reason of the severance, and the construction of the improvement in the manner proposed by the condemnor, likewise must be ascertained and assessed. *Big Lost River Irrigation Dist. v. Zollinger*, 83 Idaho 401, 363 P.2d 706 (1961).

Where exercise of the authority transgresses the bounds of reasonableness or is arbitrary in result, to the point where there is an actual taking of private property for public use, to the point where there is a deprivation of property without due process of law, action would lie for damages by way of inverse condemnation or for injunctive relief. *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964).

When property of an individual is taken for use by the public, provisions of the constitution providing for payment of just compensation must be complied with. *Roark v. City of Caldwell*, 87 Idaho 557, 394 P.2d 641 (1964).

The private landowner is entitled to damages accruing to property not taken by reason of the severance and the construction of the improvement. *State ex rel. Symms v. Thirtieth Judicial Dist.*, 91 Idaho 237, 419 P.2d 679 (1966).

To permit the state to offset the benefits to the remainder of land taken by condemnation against the value of the land where land taken constituted an independent economic unit would be contrary to this section as denying just compensation. *Orofino v. Swayne*, 95 Idaho 125, 504 P.2d 398 (1972).

Where there was no failure of the state to institute condemnation proceedings, and pay just compensation, there was no legislative

waiver of sovereign immunity for a tort action arising from alleged fraudulent misrepresentation made while acquiring lands for highway purposes. *Walker v. Board of Hwy. Dirs.*, 96 Idaho 41, 524 P.2d 169 (1974).

Although those using water for domestic purposes have preference over users claiming for any other purpose, this preference is limited by requirement of just compensation for the taking of private property for a public use when the water has already been appropriated for an inferior use. *Peck v. Sharrow*, 96 Idaho 512, 531 P.2d 1157 (1975).

State is required to pay just compensation for the value of land actually taken and for any damages which the severance will cause to the remainder of the property. *State ex rel. Moore v. Bastian*, 97 Idaho 444, 546 P.2d 399 (1976).

Although there was much conflicting evidence about the value of the collection routes taken from the garbage company, the trial court's use of the "discounted future earnings method," using a ten-year projection of future earnings with a ten percent discount rate to determine the amount of just compensation, was upheld where there was evidence in the record to support it. *Coeur D'Alene Garbage Serv. v. City of Coeur D'Alene*, 114 Idaho 588, 759 P.2d 879 (1988).

Landowners were barred from obtaining any further compensation for damages arising out of redesign of highway within the state right-of-way, due to the state's previous payment to predecessors in title for the right-of-way. *Reisenauer v. State, Dep't of Hwys.*, 120 Idaho 36, 813 P.2d 375 (Ct. App. 1991).

Dredge Mining Regulation.

Where permit, bonding, and restoration requirements of dredge and placer mining protection act were reasonably related to the enactment's purpose in protecting state lands and watercourses from pollution or destruction and in preserving these resources for the enjoyment and benefit of all people, the provisions were within the legitimate police powers of the state and thus did not constitute a taking of private property without just compensation. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

Extent of Taking.

After judicial determination of the issue whether the condemnation is sought for public use, the question of the extent of the area of the land to be taken or affected, and the necessity for the taking should in a large measure be left to the judgment and discretion of the public agency, subject, however, to regulation and control by the courts. *Big Lost River Irrigation Dist. v. Zollinger*, 83 Idaho 401, 363 P.2d 706 (1961).

Garbage Service.

Where, upon annexation, the city's exclusive service contract with a competitor ex-

cluded the garbage company from continuing to service its customers in the annexed areas, the garbage company's license from the health district granted it lawful authority to provide garbage collection service in the areas annexed prior to annexation, and the garbage company was not endangering or threatening any public health or welfare in the annexed areas, the exclusion of the garbage company from any opportunity to service its customers in the annexed areas was a taking entitling it to just compensation. *Coeur D'Alene Garbage Serv. v. City of Coeur D'Alene*, 114 Idaho 588, 759 P.2d 879 (1988).

Immunity.

If § 46-1017 grants immunity from liability to a governmental entity regarding a particular loss, then compensation for inverse condemnation cannot be awarded under Const. Art. I, § 14. *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003).

Trial court did not err when it dismissed an equipment owner's suit against a county for the loss of his front-end loader where the county was engaged in disaster relief activities, was acting under declaration of disaster emergency, and complying with Idaho Disaster Preparedness Act, Code § 46-1001 et seq., despite the fact that the owner had not consented to its use. *Inama v. Boise County*, 138 Idaho 324, 63 P.3d 450 (2003).

Interest.

Trial court's grant to garbage company of interest on the damages awarded from the dates of the takings of the garbage collection routes was proper. *Coeur D'Alene Garbage Serv. v. City of Coeur D'Alene*, 114 Idaho 588, 759 P.2d 879 (1988).

In an inverse condemnation case a party whose property has been taken should be entitled to interest on the value of the property from the date of the taking; otherwise, the party from whom the property was taken would have been deprived of both the property taken and the use of the just compensation during the period from the taking until the amount of the just compensation for the property taken is determined. *Coeur d'Alene Garbage Serv. v. City of Coeur d'Alene*, 114 Idaho 588, 759 P.2d 879 (1988).

Inverse Condemnation.

After the trial court properly struck that portion of witness' affidavit which attempted to state an expert opinion on the frequency of flooding, the remainder of witness' affidavit failed to establish that there would be either "frequent and inevitably recurring inundation" or "future probability of flooding" of lands. Without such evidence, plaintiffs failed to prove that there existed any evidence raising a genuine issue of material fact in inverse condemnation action. *Marty v. State*, 122

Idaho 766, 838 P.2d 1384 (1992).

Because landowner, suing department of transportation for inverse condemnation based on gravel excavation conducted upstream of his property, was aware of some effect the excavation had on his property at least as early as 1976 when he filed a claim under the Idaho Tort Claims Act, the limitations period set forth in § 5-224 had run before he filed his claim for inverse condemnation in 1990; summary judgment in favor of department was affirmed. *Higginson v. Wadsworth*, 128 Idaho 439, 915 P.2d 1 (1996).

Generally statutes of limitation apply to inverse condemnation claims even though they involve an issue of constitutional magnitude. *Higginson v. Wadsworth*, 128 Idaho 439, 915 P.2d 1 (1996).

Where property owners contended a taking had occurred because the operation of a landfill had caused increased traffic in the area, increased noises, offensive odors, dust, flies and litter, but there was no loss of access to or denial of any use of their property, and the property retained residual value despite any reduction in value that may have been caused by the county's actions, no compensable taking had occurred. *Covington v. Jefferson County*, 137 Idaho 777, 53 P.3d 828 (2002).

Judicial Determination of Right.

Court should decide as matter of law that use for which condemnation is sought is public use; after that, question of extent of enterprise and necessity for taking should be left, in large measure, to judgment and discretion of agency seeking condemnation. *Washington Water Power Co. v. Waters*, 19 Idaho 595, 115 P. 682 (1911); *Boise City v. Boise City Dev. Co.*, 41 Idaho 294, 238 P. 1006 (1925).

Whether claimed right is within the Constitution designating as public all uses necessary to the development of the "material resources of the state" so as to entitle a claimant to the right of eminent domain is a judicial question for the courts, and water power in a stream capable of development is one of the "material resources of the state." Also, use of land necessary to develop water power is a public use giving rise to the right of condemnation. *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931).

Session Laws 1953, ch. 252 amending § 7-717 by providing that the plaintiff in an eminent domain proceeding may file an affidavit appraising the damages, and that the court upon the filing of such affidavit may enter an order that upon payment of double such amount, the plaintiff may take immediate possession is unconstitutional, since it does not provide for an impartial tribunal to fix the damages, and violates requirement that compensation must be paid before the taking. *Yellowstone Pipe Line Co. v.*

Drummond, 77 Idaho 36, 287 P.2d 288 (1955).

The power of eminent domain extends to every kind of property taken for public use, including the right of access to public streets, such being an estate or interest in and appurtenant to real property; and since such right of access constitutes an interest in, by virtue of being an easement appurtenant to a larger parcel, the court must ascertain and assess the damages which will accrue to the portion not sought to be condemned by reason of the severance of the portion — the right of access — sought to be condemned and the construction of the improvement. *Hughes v. State*, 80 Idaho 286, 328 P.2d 397 (1958).

Where the owner of a motel maintained an off-site sign in the public right-of-way on a city's main street, but the sign did not conform to the standards of a city ordinance because, among other things, it was an off-site sign maintained in the public right-of-way without required permits from the city, and when the city refused to grant a variance permitting the retention of the sign, the motel owner filed suit seeking to declare the ordinance unconstitutional, the district court correctly held that the ordinance, as applied to the off-site sign, did not constitute a taking of private property without just compensation. *Tyrolean Assocs. v. City of Ketchum*, 100 Idaho 703, 604 P.2d 717 (1979).

Liberal Construction.

In construing above constitutional provision, this court has held it to be broader in its terms, and consequently entitled to receive a more liberal construction than constitutional provisions of a somewhat similar character, dealing with subject of eminent domain, found in a majority of various state constitutions. *Blackwell Lumber Co. v. Empire Mill Co.*, 29 Idaho 421, 160 P. 265 (1916), appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 1372 (1916).

Lumbering.

Lumbering interest of state is one of its material resources in behalf of which power of eminent domain may be invoked. *Potlatch Lumber Co. v. Peterson*, 12 Idaho 769, 88 P. 426, 118 Am. St. R. 233 (1906).

Where a temporary logging road is necessary to complete development of material resources of state, necessary use of land for a right-of-way is a "public use," and may be acquired as provided by statute. *Blackwell Lumber Co. v. Empire Mill Co.*, 28 Idaho 556, 155 P. 680, 1918A Ann. Cas. 189 (1916), appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 1372 (1917).

Mere fact that a lumber company established a logging road by exercising the power of eminent domain does not constitute such company a public utility where it has never held itself out as common carrier. *Codd v.*

McGoldrick Lumber Co., 48 Idaho 1, 279 P. 298, 67 A.L.R. 580 (1929).

Nature of Right in General.

Determination of what should be declared to be public uses in addition to those specified in constitutional provision was not within exclusive jurisdiction of legislature, and hence, in absence of statute defining same, general constitutional provision would be held to be self-executing, and courts authorized to determine whether particular use was within such provision. *Washington Water Power Co. v. Waters*, 186 F. 572 (C.C.D., Idaho 1910).

While provisions of this section are not self-executing, or in other words, do not furnish procedure by which power may be exercised, such procedure has been prescribed by legislature. *Potlatch Lumber Co. v. Peterson*, 12 Idaho 769, 88 P. 426, 118 Am. St. R. 233 (1906).

This section declares purposes for which power of eminent domain may be exercised, and the legislature can not prohibit its exercise for any of the purposes therein specified. *Potlatch Lumber Co. v. Peterson*, 12 Idaho 769, 88 P. 426, 118 Am. St. R. 233 (1906).

Necessary use of lands for complete development of material resources of state is declared to be a public use, and, in determining what is a public use, general welfare and benefit of public is to be taken into consideration. Term "public use" means public usefulness and productive of general benefit. Term is flexible one and grows as new public uses are developed so as to make it capable of meeting new conditions and improvements of ever increasing necessities of society. *Potlatch Lumber Co. v. Peterson*, 12 Idaho 769, 88 P. 426, 118 Am. St. R. 233 (1906).

To extent of establishing nature of use for which privately owned property is necessary to complete development of material resources of state, provisions of this section of Constitution are self-executing, and courts of general jurisdiction are vested with power to determine, upon judicial inquiry, whether or not any particular use for which land is sought to be appropriated is "necessary to the complete development of the material resources of the state." *Blackwell Lumber Co. v. Empire Mill Co.*, 28 Idaho 556, 155 P. 680, 1918A Ann. Cas. 189 (1916), appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 1372 (1917).

After adoption of this section, it only remained for the legislature to provide procedure to carry into effect provisions of said section. Legislature, however, might add to the public uses enumerated in said section, but it could not annul or repeal any of the uses therein specified. *Blackwell Lumber Co. v. Empire Mill Co.*, 28 Idaho 556, 155 P. 680,

1918A Ann. Cas. 189 (1916), appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 1372 (1917).

This provision is self-executing and constitutes a grant of the power of eminent domain in behalf of the uses therein expressed. *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931).

Private property of all classifications may be taken for public use. *Hughes v. State*, 80 Idaho 286, 328 P.2d 397 (1958).

It is generally recognized that there may be a taking of property in the constitutional sense although there has been no actual entry within its bounds and no artificial structure has been erected upon it. *Turcotte v. State*, 84 Idaho 451, 373 P.2d 569 (1962).

A landowner has a property right in the reasonable use of airspace above his land which cannot be "taken" for public use without just compensation. *Roark v. City of Caldwell*, 87 Idaho 557, 394 P.2d 641 (1964).

Constitutional provisions under this section and § 13 of our state constitution prohibit the taking of private property for a public use without just compensation. *Roark v. City of Caldwell*, 87 Idaho 557, 394 P.2d 641 (1964).

Provisions of city ordinance restricting height of structures on plaintiffs' property near an airport and limiting use of land constitute taking of private property for public use; therefore, no compensation having been provided, the ordinance was unconstitutional. *Roark v. City of Caldwell*, 87 Idaho 557, 394 P.2d 641 (1964).

Overflow of Land.

Contention of appellants that whether there had been a taking by the state was a matter for jury determination is without merit for although actions of this kind where an overflow is caused by state construction work on the lands of plaintiffs are based on the theory of inverse condemnation, the issues are not identical with proceedings in eminent domain. *Turcotte v. State*, 84 Idaho 451, 373 P.2d 569 (1962).

Requested instruction that the deposit of silt, mud and debris in the creek in such places as to impede drainage of plaintiff's land from annual flood waters constituted a taking of plaintiff's property, being a directive to the jury that the taking of the land had been established as a matter of law and the only jury question remaining being the assessment of damages, was properly refused inasmuch as it did not correctly state the law applicable. *Turcotte v. State*, 84 Idaho 451, 373 P.2d 569 (1962).

Pipelines.

Condemnation of a right-of-way for pipeline was a use authorized by law. *Yellowstone Pipe*

Line Co. v. Drummond, 77 Idaho 36, 287 P.2d 288 (1955).

Police Power.

The police power of the city to insure that the garbage collection service that is provided to its residents is uniform and accomplishes the purpose of maintaining the health of those who reside in and frequent the city is broad, but not unlimited, and when the exercise of the police power by the city comes in conflict with the interest of an owner in preserving a property interest, there must be a balancing of these interests. *Coeur D'Alene Garbage Serv. v. City of Coeur D'Alene*, 114 Idaho 588, 759 P.2d 879 (1988).

Possession.

Condemnor has no right to possession of land sought to be condemned until he first pays such just compensation as may be ascertained in manner prescribed by law. *Ryan v. Weiser Valley Land & Water Co.*, 20 Idaho 288, 118 P. 769 (1911).

Private Use or Gain.

This section recognizes right of legislature to provide for laying out private roads or pentways for use of any one who may desire to use them. *Latah County v. Peterson*, 3 Idaho 398, 29 P. 1089 (1892).

The owner of land is guaranteed right to have opened a private road giving him access to highway. *Latah County v. Hasfurther*, 12 Idaho 797, 88 P. 433 (1907).

Under our Constitution, authority to exercise right of eminent domain has been extended and made broader than right in many states, and is not made to depend upon narrow and restricted meaning of phrase "public use" as defined by courts of last resort of some other states. *Connolly v. Woods*, 13 Idaho 591, 92 P. 573 (1907).

Under provisions of this section, right of eminent domain is permitted on theory of public use for "complete development of the material resources of the state," even where public may have no direct interest in the exercise of the right and the main end to be served is private gain, and where the benefit to the people at large results indirectly and incidentally only from the increase of wealth and development of those material resources. *Blackwell Lumber Co. v. Empire Mill Co.*, 28 Idaho 556, 155 P. 680 (1916), appeal dismissed, 244 U.S. 651, 37 S. Ct. 744, 61 L. Ed. 1372 (1917).

First paragraph in this section declaring certain uses of land, public use subject to state regulation refers to individual uses affected with public interest, not merely those previously considered public uses for which private property may not be taken without just compensation under second paragraph of this section. *Codd v. McGoldrick Lumber Co.*,

48 Idaho 1, 279 P. 298, 67 A.L.R. 580 (1929).

Where the plaintiff had access to the highway over two other roads across other property, the reasonable necessity for a road across defendant's property was not established. *McKenney v. Anselmo*, 91 Idaho 118, 416 P.2d 509 (1966).

Where no public use was associated with right-of-way to public highway sought by lot owners, eminent domain was not the appropriate remedy to settle purely private dispute. *Cohen v. Larson*, 125 Idaho 82, 867 P.2d 956 (1993).

Procedure.

Condemnor must disclose purpose for which he is seeking to condemn property and general nature and character of improvement or structure he expects to erect to entitle him to maintain his condemnation proceedings. *Idaho-Western R.R. v. Columbia Conference Synod*, 20 Idaho 568, 119 P. 60, 38 L.R.A. (n.s.) 497 (1911).

Property cannot be condemned without due notice of proceedings, and an act which fails to provide such notice is void. *Thomas v. Boise City*, 25 Idaho 522, 138 P. 1110 (1914).

Special assessment that provides no hearing as to benefits to land assessed is unconstitutional. *Booth v. Groves*, 43 Idaho 703, 255 P. 638 (1927).

Property Already Devoted.

Property devoted to or held for a public use is subject to power of eminent domain if right to take it is given by constitutional provision or legislative enactment in express terms or by clear implication, but it can not be taken to be used for same purpose to which it is already applied or for which it is being held, if by so doing that purpose will be defeated. *Marsh Mining Co. v. Inland Empire Mining & Milling Co.*, 30 Idaho 1, 165 P. 1128 (1916).

Public Streets and Highways.

Municipal corporations, in order to acquire right to establish public highway, when same has not been dedicated to public use, must first pay just compensation for land taken. *Crane v. Harrison*, 40 Idaho 229, 232 P. 578, 38 A.L.R. 15 (1925), overruled on other grounds, *Hughes v. State*, 80 Idaho 286, 328 P.2d 397 (1958).

Where entire area described in annexation ordinance is properly brought into city, such municipality has right to condemn parcels for purpose of opening highway. *Boise City v. Boise City Dev. Co.*, 41 Idaho 294, 238 P. 1006 (1925).

Lowering the level of an entire street does not entitle the adjoining owners to compensation and such a change of level is not a "taking" within the contemplation of this section. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

Where it is made to appear that about 150 trains a day passed over the railroad tracks at a street crossing, and that 5,000 vehicles and 1,000 pedestrians crossed the track on the street, elimination of a surface crossing by construction of a subway was a lawful exercise of discretion by the State Board of Public Works, as respects abutting property owners in the block of the approach to compensation or an injunction against diversion of traffic. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

A county acquiring property for right-of-way for public highway and agreeing to erect a fence on each side of the road is liable to landowner for damages to crops by livestock resulting from its failure to construct the fence before building the road. *Bel v. Benewah County*, 60 Idaho 791, 97 P.2d 397 (1939).

Impairment of access to residential property by raising the street level eight inches constitutes a taking of private property for public use, for which just compensation must be paid. *Farris v. City of Twin Falls*, 81 Idaho 583, 347 P.2d 996 (1959).

While an abutting property owner's right of reasonable access to a public highway is a property right, which may not be taken by the state without just compensation, the erection of a barrier to prevent customers of plaintiff's gas station from parking on the highway in front of plaintiff's gas pumps to receive gas therefrom is not such a taking or interference. *Bare v. Department of Hwys.*, 88 Idaho 467, 401 P.2d 552 (1965).

The right of access to a public road does not encompass a right to any particular pattern of traffic flow. In an inverse condemnation case, where even if the claim could have been characterized as involving a property right of access, the city and state's actions in installing median barriers in highway, which required that traffic reach retail business property by a more circuitous route, did not amount to a taking as a matter of law. *Brown v. City of Twin Falls*, 124 Idaho 39, 855 P.2d 876 (1993).

Public Utilities.

Since an abutting landowner has a right, in the nature of an easement to access to and from his property to a public way, regardless of where fee in that way resides, a municipal change in the grade of a street cutting off that access amounts to a compensable taking of the abutting owner's property. *Hughes v. State*, 80 Idaho 286, 328 P.2d 397 (1958).

Furnishing of electricity for lighting, transportation, power, and other purposes, is a public use for which land may be taken. *Hollister v. State*, 9 Idaho 8, 71 P. 541 (1903).

Corporation organized to generate and furnish electrical energy is authorized to exercise right of eminent domain, though it fur-

nishes electricity for distribution by other persons and corporations. *Washington Water Power Co. v. Waters*, 186 F. 572 (C.C.D. Idaho 1910).

Right of eminent domain is not conclusive that person exercising it is public utility, and, as such, under jurisdiction of public utilities commission. *Washington Water Power Co. v. Montana Power Co.*, 3 I.P.U.C. 96, 1916E P.U.R. 144.

There is no taking of private property for public use when highway improvements force the relocation of utilities' facilities, the injury sustained, if any, being *damnum absque injuria*, since uncompensated obedience to a regulation enacted for the public safety under the police power of the state is not taking property without due compensation. *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959).

Title Acquired.

Grant by state of easement for reservoir on state lands under this section is not such a sale as contemplated by Const., art. 9, § 8, and does not convey legal title, but leaves fee-simple title to land in state. *Idaho-Iowa Lateral & Reservoir Co. v. Fisher*, 27 Idaho 695, 151 P. 998 (1915).

Trial by Jury.

Because eminent domain authority arises from an inherent sovereignty of the state to take property for its own use, such proceedings do not come within the scope of the Idaho Constitution pertaining to trial by jury. *State ex rel. Flandro v. Seddon*, 94 Idaho 940, 500 P.2d 841 (1972).

The eminent domain proceeding is founded in the Constitution, and whether the proceeding is initiated by the party seeking to condemn, or by the property owner who claims his property or rights therein have been taken, it is not an ordinary civil proceeding; hence in either case all issues, other than just compensation, are for resolution by the trial court. *Rueth v. State*, 100 Idaho 203, 596 P.2d 75 (1978).

Urban Renewal Projects.

The proposed use of property for urban renewal projects, which plaintiff sought to condemn pursuant to the Idaho Urban Renewal Law (§ 50-2001 et seq.) constituted a public use as required by the Idaho Constitution and various Idaho statutes, even though the majority of buildings would be constructed and occupied by private commercial enterprises, and the taking of property for such purpose would not be a denial of property without due process. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Water.

Construction of dam and raising same to such height as to increase height of waters for

storage purposes to be used in low water season for power purposes is public use. *Washington Water Power Co. v. Waters*, 19 Idaho 595, 115 P. 682 (1911).

This section does not limit "necessary use of lands" for "the construction of reservoirs or storage basins" to "purposes of irrigation" alone, but confers power and authority to condemn any lands for reservoirs or storage basins "for any useful, beneficial or necessary purpose" to which water can be used or applied or for which it can be stored or impounded. *Washington Water Power Co. v. Waters*, 19 Idaho 595, 115 P. 682 (1911).

Those using water for domestic purposes have preference over those claiming for any other purpose, but usage for such superior purpose is subject to provisions of Constitution regulating taking of private property for public use. *Basinger v. Taylor*, 30 Idaho 289, 164 P. 522 (1917).

Condemnation of a part of a canal for a pumping project for exchange of water is not within the purview of this provision, and can not be acquired under a condemnation proceeding. *Berg v. Twin Falls Canal Co.*, 36 Idaho 62, 213 P. 694 (1922).

Power in streams of state capable of being developed into electrical energy is one of "material resources of the state." *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931).

The defendant irrigation district cannot be required to accept payment of benefits assessed and thereafter be required to deliver water to new lands which have not been irrigated and for which no water right has been acquired or is available. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

The imposition of additional costs and burdens necessary to supply owners of new lands with water for such lands, upon the owners of the old lands, without their consent, would be an invasion of their constitutionally protected property rights. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

Since the right of appropriation pursuant to § 42-103 does not carry with it an unconditional guarantee of water regardless of the supply of water available, the fact that the diversion belonging to a holder of an appropriated but unadjudicated or licensed water right must be shut off to allow those with priority to receive water pursuant to § 42-607 does not justify a contention that private property has been taken for public use without just compensation. *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977).

Where an irrigation company had purchased approximately 300 cfs of Snake River water and sought to put that water to beneficial use on land located west of an existing canal system, but where the irrigation com-

pany had no canal and there existed no natural waterway by which its water could be transported by gravity to its stockholders' lands, the irrigation company could condemn the right to enlarge and use the existing canal in common with the canal company and thus the irrigation company could divert its water from the Snake River into the canal company's canal system and then reclaim a like amount, with due allowance for seepage and evaporation, at a headgate closer to its irrigation project site. *Canyon View Irrigation Co. v. Twin Falls Canal Co.*, 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

The irrigation and reclamation of arid lands is a well recognized public use, even if the irrigation project is ostensibly intended to benefit only private individuals, and the right to condemn for individual use is supported on the theory that the development of individual property tends to the complete development of the entire state. *Canyon View Irrigation Co. v. Twin Falls Canal Co.*, 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S. Ct. 1983, 68 L. Ed. 2d 301 (1981).

—Irrigation Districts.

When more than two-thirds of the landowners of the irrigation district have voted to approve the execution of contracts to repay their proportionate amount of major new capital improvements in order to assure that adequate supplies of water will be available, it cannot be said that the action of the board of directors divests those landowners who voted against the contracts of valuable property rights. *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978).

—Water and Sewer District.

If by its enactment of § 7-701 7, it was the intention of the legislature to restrict the exercise of eminent domain by a sewer district to uses within incorporated cities, then that provision can have no valid effect because the legislature cannot thus annul a provision of

the Constitution, such as this section, which clearly includes a sewer district and which authorizes any use necessary to the preservation of the health of the State's inhabitants. It is more likely that the legislature intended no such territorial restriction. *Payette Lakes Water & Sewer Dist. v. Hays*, 103 Idaho 717, 653 P.2d 438 (1982).

Where a water and sewer district sought to obtain temporary construction easements and permanent sewer easements across property owners' land for the purpose of constructing a sewerage facility to transport sewage to a treatment plant, the district's purpose was a public use within the meaning of this section, and was, therefore, an authorized use as contemplated by § 7-721(2)(b) for purposes of determining the sewer district's entitlement to possession of the property pending trial. *Payette Lakes Water & Sewer Dist. v. Hays*, 103 Idaho 717, 653 P.2d 438 (1982).

Zoning Restrictions.

Where buyers of property could and should have ascertained, and were charged with knowledge of, the zoning and building restrictions which were applicable to the land at the time they acquired it and where the seller discussed with the buyers potential problems of obtaining a building permit, county ordinances prohibiting subdivision of property without prior approval of zoning commission and prohibiting construction of dwelling on lot of less than 80 acres did not effect a taking of the buyers' property without compensation in violation of either the United States Constitution or the Constitution of the State of Idaho. *County of Ada v. Henry*, 105 Idaho 263, 668 P.2d 994 (1983).

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, p. 288; Vol. II, pp. 1596, 1606.

26 Am. Jur. 2d, *Eminent Domain*, §§ 2, 7.

16D C.J.S., *Constitutional Law*, §§ 1202-1210.

§ 15. Imprisonment for debt prohibited. — There shall be no imprisonment for debt in this state except in cases of fraud.

Comp. provisions: Cal. Art. 1, § 10.

Mont. Art. 2, § 27.

Ore. Art. 1, § 19.

Utah. Art. 1, § 16.

Wash. Art. 1, § 17.

Wyo. Art. 1, § 5.

Cited in: *Annest v. Conrad-Annest, Inc.*, 107 Idaho 468, 690 P.2d 923 (1984); *Carr v. Carr*, 108 Idaho 684, 701 P.2d 304 (Ct. App. 1985).

ANALYSIS

In general.

Contempt of court.

Costs of prosecution.

Larceny.

Nonsupport of children.

Theft.

In General.

The constitutional prohibition against imprisonment for debt related to matters basically contractual in nature. *Phillips v. District Court of Fifth Judicial Dist.*, 95 Idaho 404, 509 P.2d 1325 (1973).

Constitution, Article 1, § 15 is intended to

prohibit imprisonment over disputes which are contractual in nature. *State v. Owen*, 129 Idaho 920, 935 P.2d 183 (Ct. App. 1997).

Contempt of Court.

There was no violation of this section where the district court imprisoned the plaintiff for contempt of court when he failed to comply with the property settlement provisions of the divorce decree. *Phillips v. District Court of Fifth Judicial Dist.*, 95 Idaho 404, 509 P.2d 1325 (1973).

Bail bondsman's contractual obligation to pay forfeited bond was a civil liability enforceable by the prosecuting attorney in a separate civil action, and district court was without authority to enforce payment of the bond forfeiture under the penalty of contempt. *State v. Rocha*, 131 Idaho 113, 952 P.2d 1249 (Ct. App. 1998).

Costs of Prosecution.

Weight of authority is to the effect that costs of prosecution taxed against defendant in criminal case is not debt within constitutional inhibition against imprisonment for debt. *State v. Montroy*, 37 Idaho 684, 217 P. 611 (1923).

Larceny.

Law declaring agent guilty of larceny on failure to turn over money belonging to his

principal does not violate this section. *State v. Cochrane*, 51 Idaho 521, 6 P.2d 489 (1931).

Nonsupport of Children.

Imprisonment of defendant for failure to pay support does not constitute imprisonment for debt, since the obligation to pay support for one's children is not a "debt." *In re Martin*, 76 Idaho 179, 279 P.2d 873 (1955).

Theft.

Since the elements of theft by deception and theft by false promise as defined in subsections (2)(a) and (d) of § 18-2403 include a component of dishonesty or falsehood, for the former requires that the perpetrator engaged in some deception in order to acquire property and the latter requires a scheme to defraud or an express or implied misrepresentation, these subsections advance the state's interest in preserving good morals and honest dealing and are permissible criminal provisions that do not run afoul of Const., Art. 1, § 15. *State v. Owen*, 129 Idaho 920, 935 P.2d 183 (Ct. App. 1997).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 370; Vol. II, p. 1633.

16A Am. Jur. 2d, Constitutional Law, §§ 618-624.

16A C.J.S. Constitutional Law, §§ 487-490.

§ 16. Bills of attainder, etc., prohibited. — No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed.

Comp. provisions: Cal. Art. 1, § 9.

Utah. Art. 1, § 18.

Wash. Art. 1, § 23.

Wyo. Art. 1, § 35.

Cited in: *Barton v. Alexander*, 27 Idaho 286, 148 P. 471, 1917D Ann. Cas. 729 (1915); *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936); *Irvine v. Perry*, 78 Idaho 132, 299 P.2d 97 (1956); *State v. Lindquist*, 99 Idaho 845, 589 P.2d 101 (1979); *Almada v. State*, 108 Idaho 221, 697 P.2d 1235 (Ct. App. 1985); *State v. Scroggie*, 110 Idaho 103, 714 P.2d 72 (Ct. App. 1986); *Paradis v. State*, 128 Idaho 223, 912 P.2d 110 (1996).

ANALYSIS

Bills of attainder.

Bonds.

Criminal laws.

Employees' occupational disease act.

Employees' wage act.

Ex post facto laws.

Homestead exemption.

Impairing obligations of contract.

Moratorium laws.

Mortgages.

Police power.

Statutes of limitation.

Taxes and assessments.

Bills of Attainder.

As a matter of law § 20-223 does not constitute a bill of attainder; since the "type and severity" of the burden of undergoing a psychiatric evaluation is nonpunitive and slight and it bears a reasonable relationship to the proper state purpose of ensuring that prisoners released on parole will be likely to successfully serve the remainder of their sentences out of the physical custody of the Board of Corrections. *State v. Gee*, 107 Idaho 991, 695 P.2d 376 (1985).

Bonds.

Amendment of law providing for issuance, sale, and redemption of bonds, enacted while bonds are outstanding, is not violative of this provision, if it does not tend to defeat or postpone the right of bondholders to payment when due. *Highway Dist. No. 1 v. Fremont County*, 32 Idaho 473, 185 P. 66 (1919).

Provision of drainage district law making district bonds general obligations of the dis-

strict impairs the obligation of the contract between the bondholder and the property owner and is void. *Straus v. Ketchen*, 54 Idaho 56, 28 P.2d 824 (1933).

Criminal Laws.

Where the conviction of a defendant in a rape case was appealed to the Supreme Court which struck down the requirement for corroboration in rape cases, such decision altered the legal rules of evidence so that less or different testimony than the law required at the time of the commission of the offense was necessary in order to convict the offender; accordingly, the conviction, which was not supported by sufficient corroborating evidence, was reversed since to have held defendant to the new standard would have violated the prohibition of this section and U.S. Const., Art. I, § 10 against ex post facto laws. *State v. Byers*, 102 Idaho 159, 627 P.2d 788 (1981).

Employees' Occupational Disease Act.

The 1945 amendment to Occupational Disease Compensation Law, increasing maximum recovery, is not retroactive and unconstitutional as applied to claim for employee's death after effective date of amendment, so that claimant was entitled to increased compensation thereunder though employee contracted such disease because of his employment before such date. *Peterson v. Federal Mining & Smelting Co.*, 67 Idaho 111, 170 P.2d 611 (1945).

Employees' Wage Act.

This act, providing for protection of employees who are discharged from employment without receiving compensation due them from employers, is not unconstitutional as impairing obligation of contracts. *Olson v. Idora Hill Mining Co.*, 28 Idaho 504, 155 P. 291 (1916), appeal dismissed, 245 U.S. 640, 38 S. Ct. 191, 62 L. Ed. 526 (1918).

Ex Post Facto Laws.

A statute prescribing a test oath as a condition of suffrage is not an ex post facto law or bill of attainder within prohibitions of this section. *Shepherd v. Grimmett*, 3 Idaho 403, 31 P. 793 (1892).

The persistent violator statute (§ 19-2514) is not an ex post facto law because it merely increases the penalty for the commission of a subsequent crime. *State v. Dunn*, 91 Idaho 870, 434 P.2d 88 (1967).

The change in the State Correctional Institution policy discontinuing the work release program was not an ex post facto law and did not violate § 20-230. *Mellinger v. Idaho Dep't of Cors.*, 114 Idaho 494, 757 P.2d 1213 (Ct. App. 1988).

Parole conditions are not additional punishments or penalties to the crime for which a person is sentenced and incarcerated; their

violation may simply result in the loss of parole; consequently, implementation of the Intensive Supervision Program did not violate the ex post facto prohibition. *Mellinger v. Idaho Dep't of Cors.*, 114 Idaho 494, 757 P.2d 1213 (Ct. App. 1988).

The application of the Driving While Under the Influence (DUI) statute enhancement provision did not violate constitutional prohibitions against ex post facto laws, even though the defendant's prior felony DUI conviction was entered before the enactment of this section. *State v. Nickerson*, 132 Idaho 406, 973 P.2d 758 (Ct. App. 1999).

Homestead Exemption.

Where value of homestead exemption under § 55-1201 (now repealed) was increased by amendment from \$10,000 to \$25,000 effective one month before bankrupts filed their petition, the increased exemption does not apply retroactively to preamendment creditors since retroactive application would violate U.S. Const., Art. I, § 10, and this section as an unconstitutional impairment of contracts by state legislation. *In re Echavarren*, 2 Bankr. 215 (Bankr. D. Idaho 1980).

Impairing Obligations of Contract.

Any enactment of legislative character which attempts to take from party right to which he is entitled or which deprives him of means of enforcing such right comes within prohibition of this section. *Fidelity State Bank v. North Fork Hwy. Dist.*, 35 Idaho 797, 209 P. 449, 31 A.L.R. 781 (1922).

Law enacted subsequent to contract which will have effect of annulling contract is most palpable form of legislative impairment. *Fidelity State Bank v. North Fork Hwy. Dist.*, 35 Idaho 797, 209 P. 449, 31 A.L.R. 781 (1922).

Legislation that attempts to make material alterations in character, terms, or legal effect of existing contracts is clearly void. *Fidelity State Bank v. North Fork Hwy. Dist.*, 35 Idaho 797, 209 P. 449, 31 A.L.R. 781 (1922).

Remedy to enforce contract is part of contract and any subsequent legislation that so affects remedy as to impair or lessen value of contract is unconstitutional. *Fidelity State Bank v. North Fork Hwy. Dist.*, 35 Idaho 797, 209 P. 449, 31 A.L.R. 781 (1922).

Statute which does not act on contract itself but merely on property which is subject of contract can not be said to impair obligation of contract. *Sanderson v. Salmon River Canal Co.*, 45 Idaho 244, 263 P. 32 (1927).

Statute providing lien for maintenance charges on irrigated land does not impair obligation of mortgage thereon, when security of mortgage is not lessened in amount or its enforcement denied. *Sanderson v. Salmon River Canal Co.*, 45 Idaho 244, 263 P. 32 (1927).

A law which in its operation amounts to a

denial or obstruction of rights accruing by contract, though purporting to act only on the remedy, is, nevertheless, unconstitutional. The obligation of a contract cannot be impaired by legislation under the guise of acting on the remedy only. *Steward v. Nelson*, 54 Idaho 437, 32 P.2d 843 (1934).

To construe a statute affecting liens on land so as to make it retroactive would make it violative of this section. *Smith v. Nampa*, 57 Idaho 736, 68 P.2d 344 (1937).

Acts 1951, ch. 289, providing for allowance of attorney fees in actions upon insurance policies where insurance company fails to pay "amount justly due under such policy" impairs the obligation of contract insofar as act applies to policies issued prior to effective date of act. *Penrose v. Commercial Travelers Ins. Co.*, 75 Idaho 524, 275 P.2d 969 (1954).

The right to dispose of property by will is in no sense a property right and since there is no showing that a will is a contract or that a contract to make a will was involved it could not be claimed that the Uniform Probate Code (§§ 15-1-101 — 15-7-401) impaired the obligation of a contract. *Simmons v. Ewing*, 96 Idaho 380, 529 P.2d 776 (1974).

The public utilities commission had authority to fix utility rates which would supersede rates previously fixed by private contract, but before the commission could increase electric service rates charged to an industrial customer under a special service contract it was required to find specifically that the different rate was unreasonable and adverse to the public interest. *Agricultural Prods. Corp. v. Utah Power & Light Co.*, 98 Idaho 23, 557 P.2d 617 (1976).

The state may not interfere with a utility contract unless it finds that the rate is so low as to adversely affect the public interest. *Bunker Hill Co. v. Washington Water Power Co.*, 98 Idaho 249, 561 P.2d 391 (1977).

A franchise ordinance represents a contract between the city and its grantee. As such, the franchise is entitled to protection under the contract clause of this section, which bars enactment of state laws impairing the obligations of contracts; thus, a city's amendatory ordinance requiring the payment of a franchise fee was unconstitutional. *City of Hayden v. Washington Water Power Co.*, 108 Idaho 467, 700 P.2d 89 (Ct. App. 1985).

The constitutional impairment of contracts clause protects only those contractual obligations already in existence at the time the disputed law is enacted. *Lindstrom v. District Bd. of Health*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

Moratorium Laws.

The Supreme Court of the United States recognizes the reserve power of the state to declare an emergency warranting an exten-

sion of the period of redemption, and the equity power of courts to extend that period within limits and upon equitable terms, thus providing a procedure and relief cognate to the historic exercise of equity jurisdiction. *Alliance Trust Co. v. Hall*, 11 F. Supp. 668 (D. Idaho 1935).

The legislature had the power to enact the moratorium act of Idaho and equity courts have jurisdiction to grant an extension to the period of redemption provided for in the Idaho law if the facts produced come within the requirements of the law. *Alliance Trust Co. v. Hall*, 11 F. Supp. 668 (D. Idaho 1935).

Mortgages.

Attempted suspension of the right to foreclose a mortgage, executed before the law empowering the governor to proclaim suspension, would be an impairment of the contract. *Alliance Trust Co. v. Hall*, 5 F. Supp. 285 (D. Idaho 1933).

It is well settled that the law existing when a mortgage is made enters into and becomes a part of the contract. Where, under the law when the contract was made the life of the mortgage did not cease so long as the debt was actionable, a law limiting the life of mortgages to ten years irrespective of the life of the debt it secures impairs the obligation of the contract. *Steward v. Nelson*, 54 Idaho 437, 32 P.2d 843 (1934).

Sections 44-1102, 44-1103 of the Code of 1932 (repealed by Session Laws 1939, Chapter 186) so far as they related to mortgages executed in 1916 and 1918, and payment of debts which mortgages secured and which were due in 1920, impaired the obligation of a contract, and to that extent, were invalid. *Steward v. Nelson*, 54 Idaho 437, 32 P.2d 843 (1934).

Police Power.

Municipal corporation can not question right of state to exercise its police power in regulation of rates on ground that by so doing it would impair obligation of contract. *Sandpoint Water & Light Co. v. City of Sandpoint*, 31 Idaho 498, 173 P. 972, 1918F L.R.A. 1106 (1918).

Statutes of Limitation.

A statute of limitation may be extended prior to the expiration of the original statute of limitations without being violative of the ex post facto law provisions of the United States and Idaho Constitutions. *State v. O'Neill*, 118 Idaho 244, 796 P.2d 121 (1990).

Taxes and Assessments.

Any law changing intent and legal effect, giving to one a greater and to the other a less interest or benefit in the contract, impairs its obligation, so that to impose a tax on the assessment district taxpayer who has paid his

assessment to pay a deficiency resulting from the delinquency of other members of the district would impose on the former an additional and different obligation than the one of which he had notice. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

While a tax is not considered a contract, an assessment district bond is a contract of limited liability between the bondholder and the district property owner, and to levy a general tax to pay the unpaid balance due on these bonds would increase this limited liability of the property holder and impair the obligation of his contract. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

Opinions of Attorney General. Section 63-3027A, as amended by S.L. 1991, ch. 115,

§ 1, p. 243, affecting computation of Idaho income taxes paid by nonresidents, retroactive to January 1, 1985, will apparently withstand a challenge made under the federal due process clause and contract clauses of the federal and state constitutions and will also probably withstand scrutiny under art. 11, § 12, of the Idaho Constitution; however, a separation of powers challenge will likely succeed. OAG 91-2.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 371; Vol. II, p. 1634.

16A Am. Jur. 2d, Constitutional Law, §§ 655-660.

16A C.J.S. Constitutional Law, §§ 429-431.

§ 17. Unreasonable searches and seizures prohibited. — The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

Cross ref. Use of any name in warrant if true name is unknown, see § 19-508.

Comp. provisions: Cal. Art. 1, § 13.

Mont. Art. 2, § 11.

Nev. Art. 1, § 18.

Ore. Art. 1, § 9.

Utah. Art. 1, § 14.

Wyo. Art. 1, § 4.

Sec. to sec. ref. This section is referred to in §§ 39-108, 39-4412, 39-6209.

Cited in: *State v. Mulkey*, 6 Idaho 617, 59 P. 17 (1899); *Mullen v. Moseley*, 13 Idaho 457, 90 P. 986, 12 L.R.A. (n.s.) 394, 121 Am. St. R. 277, 13 Ann. Cas. 450 (1907); *Gillesby v. Board of Comm'rs*, 17 Idaho 586, 107 P. 71 (1910); *In re Davis*, 23 Idaho 473, 130 P. 786 (1913); *Federal Mining & Smelting Co. v. Public Utils. Comm'n*, 26 Idaho 391, 143 P. 1173, 1917F L.R.A. 1195 (1914); *State v. Anderson*, 31 Idaho 514, 174 P. 124 (1918); *Struve v. Wilcox*, 99 Idaho 205, 579 P.2d 1188 (1978); *State v. Lang*, 105 Idaho 683, 672 P.2d 561 (1983); *State v. Huskey*, 106 Idaho 91, 675 P.2d 351 (Ct. App. 1984); *Sprague v. City of Burley*, 109 Idaho 656, 710 P.2d 566 (1985); *State v. Lewis*, 106 Idaho 800, 683 P.2d 448 (Ct. App. 1984); *Herrera v. Conner*, 111 Idaho 1012, 729 P.2d 1075 (Ct. App. 1986); *State v. Molina*, 113 Idaho 449, 745 P.2d 1070 (Ct. App. 1987); *State v. Walker*, 126 Idaho 508, 887 P.2d 53 (Ct. App. 1994); *State v. Rodriguez*, 128 Idaho 521, 915 P.2d 1379 (Ct. App. 1996); *State v. Sailas*, 129 Idaho 432, 925 P.2d 1131 (Ct. App. 1996); *State v. Kay*, 129 Idaho 507, 927 P.2d 897 (Ct. App. 1996); *State v. Frank*, 133 Idaho 364, 986 P.2d 1030 (Ct. App. 1999); *State v. Fleenor*, 133 Idaho 552, 989 P.2d 784 (Ct. App. 1999); *State v. Carlson*,

134 Idaho 471, 4 P.3d 1122 (Ct. App. 2000); *State v. Hankey*, 134 Idaho 844, 11 P.3d 40 (2000); *State v. Nickel*, 134 Idaho 610, 7 P.3d 219 (2000); *State v. Card*, 137 Idaho 182, 45 P.3d 838 (2002).

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Address.

Where an informant told affiant police officer that a large quantity of marijuana would be delivered to “Bill’s,” which “Bill” was already known to affiant who merely looked up the address involved, it was at most negligent

misrepresentation that affiant made in his affidavit which stated that the informant had given the address itself, and was not such an intentional or reckless misrepresentation as to invalidate the search warrant. *State v. Lindner*, 100 Idaho 37, 592 P.2d 852 (1979).

Application.

The provisions of § 13 of Article I of the constitution that “no person shall . . . be compelled in any criminal case to be a witness against himself”, and of this section of said article “against unreasonable searches and seizures”, are applicable only to testimonial compulsion and do not apply to “real” evidence produced by a reasonable examination of the body of the accused, or a reasonable search and seizure of his person and effects. *State v. Bock*, 80 Idaho 296, 328 P.2d 1065 (1958).

The legality of the search and seizure was a matter to be determined at the trial of the case and not in a habeas corpus proceeding. *Smith v. State*, 87 Idaho 163, 391 P.2d 849 (1964).

The familiar dual test for determining whether an accused person's constitutional rights have been implicated by a search is whether the individual entertained a genuine expectation of privacy where the search occurred, and whether the accused's subjective expectation of privacy is one which society is willing to recognize as objectively reasonable. *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985); *State v. Cootz*, 110 Idaho 807, 718 P.2d 1245 (Ct. App. 1986).

The traditional rules of standing no longer adequately frame the proper inquiry into whether an accused's rights under this section have been violated by a search; the modern approach allows a search to be challenged when a personal interest under the Fourth Amendment is asserted and a legitimate expectation of privacy is shown to exist in the area searched or the items seized. *State v. Brown*, 113 Idaho 480, 745 P.2d 1101 (Ct. App. 1987), cert. denied, 116 Idaho 467, 776 P.2d 829 (1988).

Arrest — Probable Cause.

Where an arrest warrant has been issued without a magistrate's finding of probable cause, the illegality of such an arrest, while providing grounds in habeas corpus proceedings and perhaps for asking application of the exclusionary rule as to confessions or evidence obtained in search pursuant to arrest does not invalidate a conviction which results from a fair trial of the issue of guilt. *State v. Watson*, 99 Idaho 694, 587 P.2d 835 (1978).

While a suspect's arrest and pretrial detention not based on the probable cause finding of a neutral and detached magistrate is impermissible under the provisions of the fourth and fourteenth amendments to the United

States Constitution and this section, a conviction will not be vacated on the ground that the defendant was detained pending trial without determination of probable cause. *State v. Watson*, 99 Idaho 694, 587 P.2d 835 (1978).

If officers had probable cause to arrest suspect at the time they conducted the search, the fact that the search preceded his formal arrest by several minutes would not necessarily render the search illegal. *State v. Cook*, 106 Idaho 209, 677 P.2d 522 (Ct. App. 1984).

The officer's observations of defendant's activities gave a reasonable basis to suspect that defendant and his companion were engaged in the use of controlled substances where defendant's pickup was parked across the street from a tavern that was reportedly a center of drug activity, officer had seen defendant and another person sitting in the pickup, bending over and engaging in body movements that were consistent with the inhalation of drugs, defendant and that individual entered tavern and returned five minutes later with another person and engaged in same behavior in the pickup and as officer approached the pickup, officer saw defendant quickly place something in his pocket. *State v. Holcomb*, 128 Idaho 296, 912 P.2d 664 (Ct. App. 1995).

Bank Records.

Magistrate properly issued search warrant for defendant's bank records where the affidavits detailed defendant's association with suspected narcotics suppliers in two different states; his high standard of living despite low earnings and sporadic employment; first-hand accounts of defendant's drug dealing protocol, including information as to the location of defendant's marijuana cache; as well as various income tax irregularities. These facts indicated defendant's involvement in criminal enterprise and a substantial probability that his bank records would contain evidence of income from illegal sources. *State v. Patterson*, — Idaho —, 87 P.3d 967 (Ct. App. 2003).

Blood Alcohol Test.

Evidence in involuntary manslaughter prosecution of appellant's refusal to submit to a blood test was competent and admissible for, like any other act or statement voluntarily made by him, it was competent for a jury to consider and weigh, with the other evidence, and to draw from it whether the inference as to guilt or innocence may be justified thereby. *State v. Bock*, 80 Idaho 296, 328 P.2d 1065 (1958).

Where intoxication is an evidentiary element of "reckless disregard" in a homicide case arising out of the operation of a motor vehicle, the accused has no constitutional right to refuse to submit to a reasonable search and examination of his person, includ-

ing an examination of his blood in the manner authorized by law. *State v. Bock*, 80 Idaho 296, 328 P.2d 1065 (1958).

The administration of a blood alcohol test is a seizure of the person, and a search of his body for evidence, within U.S. Const., Amend. 4. However, the constraints of time due to natural destruction of the evidence, as alcohol is eliminated from the human body, makes a warrantless blood test reasonable and appropriate. *State v. Curtis*, 106 Idaho 483, 680 P.2d 1383 (Ct. App. 1984).

The destruction of evidence of intoxication by metabolism of alcohol in the blood provided an inherent exigency which justified a warrantless search and testing of defendant's blood provided that there was sufficient justification for ordering the test and that the test was conducted in a reasonable manner. *State v. Woolery*, 116 Idaho 368, 775 P.2d 1210 (1989).

The circumstances of an automobile accident, including defendant's speeding and having failed to stop at a stop sign, together with the treating physician's opinion of intoxication, satisfied the required probable cause to request a test of defendant's blood. *State v. Woolery*, 116 Idaho 368, 775 P.2d 1210 (1989).

Consent.

There is no rule requiring that an accused be advised of his right to refuse consent to a warrantless search. *State v. Christofferson*, 101 Idaho 156, 610 P.2d 515 (1980).

The defendant's landlord was without authority for purposes of either the Fourth Amendment of the United States Constitution or this section to give effective consent to a search of the defendant's home where the state was unable to present any evidence that the landlord had mutual use of the property or that the defendant had assumed the risk that the landlord might permit the area to be searched, the tenant had a legitimate and reasonable expectation of privacy in his home, and there was no evidence that he had abandoned his residence. *State v. Johnson*, 110 Idaho 516, 716 P.2d 1288 (1986).

A valid consent dispels the necessity for a search warrant, but the state bears the burden of proving that a consent has been given freely and voluntarily. The existence of consent must be determined from all the circumstances, and even if consent has been given, expressly or impliedly, it may be revoked, thereby terminating the authority of the police to continue a warrantless search. *State v. Rusho*, 110 Idaho 556, 716 P.2d 1328 (Ct. App. 1986).

The defendant's mother possessed sufficient use, control and authority over the premises, including the closet in the bedroom occupied by the defendant, to give valid consent to a warrantless search. *State v. Ham*,

113 Idaho 405, 744 P.2d 133 (Ct. App. 1987).

The trial court did not abuse its discretion by suppressing evidence obtained through a consent search conducted after an illegal arrest, where there was no appreciable lapse of time between the illegal arrest and the consent, and where the consent was the direct product of the arrest. *State v. Weber*, 116 Idaho 449, 776 P.2d 458 (1989).

Deputy reasonably believed that wife had authority to consent to the search of the locked basement room and shed, and therefore the search was valid. *State v. McCaughey*, 127 Idaho 669, 904 P.2d 939 (1995).

As long as the police officer reasonably believes that the person giving consent to a warrantless search has the authority to consent, the search is valid and the defendant's right against unreasonable searches and seizures pursuant to the Fourth Amendment to the United States Constitution and this section is not violated, even though the consentor has no actual authority to consent. *State v. McCaughey*, 127 Idaho 669, 904 P.2d 939 (1995).

Where evidence indicated that when officer asked defendant if he could search vehicle, defendant agreed and also asked if officer had warrant, and before continuing officer twice asked defendant if he was withdrawing his consent and defendant replied both times that he was not, there was nothing to support defendant's contention that his consent was coerced. *State v. Holcomb*, 128 Idaho 296, 912 P.2d 664 (Ct. App. 1995).

Where a police officer asked the driver of a vehicle for consent to search the vehicle, after inquiring as to whether there were any weapons or drugs present, where the owner of a backpack was present during that conversation and remained silent until after the officer had discovered the pack and the contraband it contained, the officer had an objectively reasonable belief that the driver's consent was all that was necessary to allow the search of the pack, and he properly relied on the driver's apparent authority to consent. *State v. Frizzel*, 132 Idaho 592, 975 P.2d 1187 (Ct. App. 1999).

—Implied.

Officers whose names were not on the consent to search form were still authorized to enter defendant's motel room to search because consent was "implied" from defendant's actions in opening the door with his key and allowing the men to enter the room. *State v. Knapp*, 120 Idaho 343, 815 P.2d 1083 (Ct. App. 1991).

—Landlord.

A landlord has apparent authority to consent to a search where the totality of circumstances indicates to a reasonable person that the tenant has abandoned the premises. *State*

v. Brauch, 133 Idaho 215, 984 P.2d 703 (1999).

Mere nonpayment of rent does not give a landlord apparent authority to consent to a search of tenants' premises. *State v. Brauch*, 133 Idaho 215, 984 P.2d 703 (1999).

Where a landlord told detectives many facts before they entered the house that indicated that possession of the property had reverted to her, and where nothing they saw upon entering the premises contradicted that assertion, the detectives were entitled to believe that the landlord had authority to consent to a search. *State v. Brauch*, 133 Idaho 215, 984 P.2d 703 (1999).

—Voluntary.

Where defendant asserted that a warrantless search of his vehicle was conducted without his consent and in violation of his rights under this section and made a motion to suppress evidence seized during the search, the Court of Appeals held that the district court had erred in application of the clear and convincing evidence standard as at suppression hearings, the burden is upon the state to show by a preponderance of the evidence that a consent to search was given freely and voluntarily. *State v. Jones*, 126 Idaho 791, 890 P.2d 1214 (Ct. App. 1995).

The officer's momentary delay in serving the citation and returning the driver's documents did not cause defendant to be unlawfully detained, and defendant freely and voluntarily consented to the search of his truck. *State v. Silva*, 134 Idaho 848, 11 P.3d 44 (Ct. App. 2000).

The district court erred once when it failed to determine whether defendant remained unlawfully detained when he agreed to permit a search of the automobile, and again when it failed to find whether or not defendant's consent to search the vehicle was voluntary. *State v. Zavala*, 134 Idaho 532, 5 P.3d 993 (Ct. App. 2000).

Where defendant gave police consent to search a residence in exchange for towing a car and other conditions, a warrant to search the residence was not required because the consent was voluntarily given; moreover, the evidence showed that defendant initiated the conversation leading to the search, and defendant was informed that the consent could have been terminated at any time. *State v. Hansen*, 138 Idaho 791, 69 P.3d 1052 (2003).

—Written.

Where defendant was informed of his *Miranda* rights and the reason for the search before he signed the written consent to search form, and he was not threatened or promised anything in exchange for his consent, he voluntarily signed the form authorizing officer to search his motel room for incriminating evidence. *State v. Knapp*, 120 Idaho 343, 815 P.2d 1083 (Ct. App. 1991).

The officers' initial entry into the residence and subsequent search of the portable safe was pursuant to defendant's prior written acknowledgment and consent to the search of her residence in conjunction with her living with a felony probationer. *State v. Devore*, 134 Idaho 344, 2 P.3d 153 (Ct. App. 2000).

Construction.

This section is to be construed consistently with the U.S. Const., Amend. 4. *State v. Cowen*, 104 Idaho 649, 662 P.2d 230 (1983).

Contents of Warrant.

Search warrant must conform strictly to constitutional and statutory provisions providing for its issuance. It must contain description of premises to be searched. No discretion must be left in officer as to premises he is authorized to search. *Purkey v. Maby*, 33 Idaho 281, 193 P. 79 (1920).

Where a search warrant is issued, it must be so full and complete that there is no room for the exercise of any discretion on the part of the executing officer. *Purkey v. Maby*, 33 Idaho 281, 193 P. 79 (1920).

Description in a warrant of the place to be searched by street address must be correct so that the officers conducting the search can ascertain and identify the place intended from other neighboring properties. *State v. Yoder*, 96 Idaho 651, 534 P.2d 771 (1975).

Since only a judicial officer may alter, modify or correct a warrant, a correction in the house number on a search warrant made by one of the officers participating in the search was without effect and thus the warrant did not support a search of the intended premises. *State v. Yoder*, 96 Idaho 651, 534 P.2d 771 (1975).

Control of Premises.

Where there was no evidence that the defendant's landlord ever gave the defendant written notice of nonpayment of rent as spelled out by §§ 6-303 3. and 6-304, the defendant's occupancy of the rented premises was legal. He therefore was justified in expecting protection from the subsequent government intrusion and search. *State v. Johnson*, 110 Idaho 516, 716 P.2d 1288 (1986).

Description.

Where officers possessed a warrant that contained an erroneous house number but also described the place to be searched as a green house, a single-story wood frame house, resting on the southeast corner of two known streets, 31st and Bella, and where no other house rested on that particular corner; the address was written on the door frame molding rather than standard manufactured numerals, the officer with the search warrant could, with reasonable effort, ascertain and identify the place intended to be searched and

evidence recovered by the search should not have been suppressed. *State v. Hart*, 100 Idaho 137, 594 P.2d 647 (1979).

Where the inclusion of the incorrect road name, by itself, served only to describe a technically nonexistent location which could never be mistakenly searched, and where the presence of the additional description assured that the officer could, and did, with reasonable effort, "ascertain and identify the place intended," the warrant served its intended purpose; a constitutionally adequate description was provided, and thus the listing of a technically incorrect road name was inconsequential. *State v. Carlson*, 101 Idaho 598, 618 P.2d 776 (1980).

Where the description in the warrant was narrower than the affidavit, and no satisfactory connection of any kind between the affidavit and the warrant was established, the description in the warrant controlled. *State v. Fowler*, 106 Idaho 3, 674 P.2d 432 (Ct. App. 1983), overruled on other grounds, *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

Where the description in the warrant is broader than that in the affidavit, the description in the affidavit circumscribes what may be seized under the warrant; on the other hand, where the description in the warrant is narrower its language controls to the exclusion of the affidavit. However, if an affidavit is incorporated into the warrant, it may supplement the language of the warrant. *State v. Fowler*, 106 Idaho 3, 674 P.2d 432 (Ct. App. 1983), overruled on other grounds, *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

The purpose of the description of the premises in a search warrant is to allow the executing officers to ascertain and identify the property to be searched and to distinguish the intended property from neighboring property; if the same officers are involved in obtaining and executing the warrant, these objectives are more likely to be met. *State v. Sapp*, 110 Idaho 153, 715 P.2d 366 (Ct. App. 1986).

In determining the sufficiency of the description of the premises to be searched in the search warrant, the executing officer's knowledge of the place to be searched is relevant, although it would not substitute for a complete lack of accurate information in the warrant. *State v. Schaffer*, 112 Idaho 1024, 739 P.2d 323 (1987).

The description on the search warrant was sufficient, where the residence was located in a remote rural area that did not have exact directions or house numbers, and the fact that the officers knew how to reach the residence combined with the description of the house and greenhouse made the prospect of a mistaken search remote. *State v. Schaffer*, 112 Idaho 1024, 739 P.2d 323 (1987).

—Items.

Where a warrant describes a controlled substance in a certain form, but the purpose of the search is not limited to finding the substance in that particular form, the scope of the warrant shall extend to alternate forms of the same substance which are similarly controlled by statute. *State v. O'Campo*, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

Where a search warrant on its face authorized police to search for PCP on mint leaves or in a powdered form, but instead the PCP was found in a liquid solution, the controlled substance had not lost its identity; it had merely taken a different form still controlled by § 37-2707 and remained subject to search. *State v. O'Campo*, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

—Land.

Even though the description of the land in a search warrant failed to give the meridian and the county where the land was located but the same officers obtained and executed the warrant, the possibility that neighboring properties would be mistakenly searched or that the officers executing the warrant would not be able to locate the property was significantly reduced, and the warrant was valid. *State v. Sapp*, 110 Idaho 153, 715 P.2d 366 (Ct. App. 1986).

Detention of Occupants of Home.

A warrant to search a home for contraband, founded upon probable cause, implicitly carries with it a limited authority to detain occupants of the premises while a proper search is conducted. *State v. Schaffer*, 107 Idaho 812, 693 P.2d 458 (Ct. App. 1984).

Disclosure of Bank Record.

The claimed discretionary power assumed by bank manager in contacting depositor's employer and showing him the ledger record of the depositor's personal account, showing checks returned for "not sufficient funds," did not dispense with the necessity of assent to such disclosure by the depositor. *Peterson v. Idaho First Nat'l Bank*, 83 Idaho 578, 367 P.2d 284 (1961).

Duty of Police.

The police do not have a "duty" to enter homes whenever something seems amiss. *State v. Rusho*, 110 Idaho 556, 716 P.2d 1328 (Ct. App. 1986).

Exclusion of Evidence.

A violation of an individual's constitutional rights against unreasonable searches will result in the exclusion of illegally seized evidence. *State v. Johnson*, 110 Idaho 516, 716 P.2d 1288 (1986).

When the police exceed the scope of a warrant, the entire search ordinarily is not rendered invalid; rather, those items of property

unlawfully seized will be suppressed. *State v. Lindsey*, 115 Idaho 184, 765 P.2d 695 (Ct. App. 1988), cert. denied, 115 Idaho 795, 770 P.2d 804 (1989).

Where, (1) defendant was impermissibly seized from his home, asked questions in a squad car on the way to the police station, and immediately taken to an interrogation room after arriving at the station, where (2) upon entering the interrogation room, defendant signed a written waiver of his *Miranda* rights, where (3) the officers then engaged him in a discussion pertaining to his activities on the day in question, where (4) defendant made no incriminating statements, and where (5) the officers then left him alone with his parole officer after which defendant admitted that he was present at the time victim was murdered, properly warning defendant of his Fifth Amendment/*Miranda* rights was not by itself sufficient to purge the taint of the impermissible seizure, however, when combined with defendant's consultation with his parole officer, thereby interrupting any police activity, this was sufficient to render defendant's statements admissible. *State v. Bainbridge*, 117 Idaho 245, 787 P.2d 231 (1990).

Exigent Circumstances.

Where a neighbor called the police, informing them that the defendant had fled from her home in fear of an intruder, there were exigent circumstances to justify a warrantless search. However, after the first officer, a neighbor and the defendant had entered the house without incident, there was no compelling emergency and a subsequent search of the house by the second officer over the objections of the defendant was not justified. *State v. Rusho*, 110 Idaho 556, 716 P.2d 1328 (Ct. App. 1986).

Where firefighters discovered evidence of a marijuana-growing operation in defendant's house while responding to a fire, the warrantless search of the basement was justified by exigent circumstances; however, although the warrantless search of the upstairs bedroom was unlawful, this illegality did not invalidate the warrant, and the evidence found in the bedroom inevitably would have been discovered during the execution of the warrant. *State v. Buterbaugh*, 138 Idaho 96, 57 P.3d 807 (Ct. App. 2002).

False Information Exception.

Defendant failed to make a threshold showing under the false information exception to the good faith standards established in *United States v. Leon*, 486 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984), and the trial court did not err in refusing to suppress the seizure of 400 marijuana plants from defendant although defendant claimed that the magistrate who issued the search warrant was misled by information that the officer

who applied for warrant knew to be false, or would have known was false except for the officer's reckless disregard of the truth. *State v. Prestwich*, 116 Idaho 959, 783 P.2d 298 (1989), overruled on other grounds, *State v. Guzman*, 122 Idaho 981, 842 P.2d 660 (1992).

If it is established that, absent certain false information, there was insufficient evidence to support a finding of probable cause for the issuance of a search warrant, the defendant is entitled to a hearing held pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), and has the burden of proving at such hearing that (1) the magistrate was misled by such false information and (2) that the affiant knew such information was false or would have known was false except for his reckless disregard of the truth. *State v. Beaty*, 118 Idaho 20, 794 P.2d 290 (Ct. App. 1990).

Where defendant makes a substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard to the truth, was included by the affiant in the warrant affidavit, and if the allegedly false statement is necessary to the finding of probable cause, the Fourth Amendment to the U.S. Constitution requires that a hearing be held at the defendant's request. If at that hearing the allegation of perjury or reckless disregard for truth is established by the defendant by a preponderance of the evidence, and, with the affidavit's false material set to one side, the affidavit's remaining content is insufficient to establish probable cause, the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit. *State v. Oakley*, 119 Idaho 1006, 812 P.2d 313 (Ct. App. 1991).

Defendant convicted of manufacture of marijuana failed to show that police supplied false information knowingly and intentionally, or with reckless disregard for truth in order to obtain a search warrant. Officers' statement that defendant's home was 100% wood heated was based on assessor's record and by observing smoke coming from defendant's chimney; the officers were not required to obtain defendant's application for electric service, on which defendant had written that the house was heated by electricity. *State v. Peightal*, 122 Idaho 5, 830 P.2d 516 (1992).

—Good Faith Exception.

The good faith exception to the exclusionary rule does not apply under this section of the state constitution. *State v. Guzman*, 122 Idaho 981, 842 P.2d 660 (1992).

The Idaho Supreme Court's rejection of the good faith exception to the exclusionary rule under this section in *State v. Guzman*, 122 Idaho 981, 842 P.2d 660 (1992), will be applied retroactively to all cases that had not become

final when *Guzman* was issued, including those that were in progress in the trial courts. *State v. Josephson*, 123 Idaho 790, 852 P.2d 1387 (1993).

—Omission of Information.

The failure to inform a magistrate of a known exculpatory fact may be more misleading than the furnishing of false information in applying for a search warrant. *State v. Beaty*, 118 Idaho 20, 794 P.2d 290 (Ct. App. 1990).

Where neither police officer nor the prosecuting attorney felt it significant that the officer entered by ruse into a drug suspect's motel room, and while inside found no evidence of drug-related activity, however, where nonetheless they made a deliberate and calculated decision to keep that information from the magistrate to whom they had applied for a search warrant with regard to the same room, this withholding of possibly exculpatory information constituted a reckless disregard for the truth, as the omission of this information was material to the magistrate's consideration of probable cause. *State v. Beaty*, 118 Idaho 20, 794 P.2d 290 (Ct. App. 1990).

At a hearing held pursuant to *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674, 57 L. Ed. 2d 667 (1978), the trial court must, in cases involving the failure to furnish exculpatory or other material information, determine whether there is a substantial probability that had the omitted information been given to the magistrate it would have altered the latter's determination of probable cause, rather than whether the magistrate was misled by such omission. *State v. Beaty*, 118 Idaho 20, 794 P.2d 290 (Ct. App. 1990).

In an investigation involving defendant's cultivation of marijuana in his home, where a detective's affidavit in support of a search warrant stated that a comparative power analysis revealed an average monthly increase of 453% in defendant's kilowatt hour usage over that of the previous occupant, but where it was not disclosed that the usage was compared to a time period in the previous years when the house was vacant, the failure to provide such information in the warrant affidavit constituted a reckless disregard for the truth, as the police acted with a reckless disregard when they failed to assess alternative reasons for the large discrepancy in power usage. *State v. Jardine*, 118 Idaho 288, 796 P.2d 165 (Ct. App. 1990).

Defendants may challenge affidavits in support of search warrants based on deliberate or reckless omissions of facts which cause a seemingly straightforward affidavit to mislead the magistrate. *State v. Jardine*, 118 Idaho 288, 796 P.2d 165 (Ct. App. 1990).

—Overbroad.

When a warrant is partially overbroad, only the property unlawfully seized is subject to

suppression; therefore, since defendant had not asserted that the warrant's authorization to search for methamphetamine was overbroad, even assuming some overbreadth, the search and seizure of the methamphetamine from defendant's purse was proper. *State v. Bulgin*, 120 Idaho 878, 820 P.2d 1235 (Ct. App. 1991).

—Pattern of Misrepresentation.

A long pattern or practice of negligent misrepresentation could be seen as an indication of a knowing and intentional intelligent omission or falsification of information sufficient to invalidate a search warrant. *State v. Guzman*, 122 Idaho 981, 842 P.2d 660 (1992).

—Premises.

The word "premises" in a search warrant does not have one fixed and definite meaning, but rather must be interpreted in light of the context and circumstances in which it is used. *State v. Sapp*, 110 Idaho 153, 715 P.2d 366 (Ct. App. 1986).

Where the search warrant used the word "premises" and the transcripts of the probable cause hearings for the warrants revealed that the magistrate who issued the warrant for a search of the "premises" was made aware of the information about a "fool proof greenhouse," the search of the greenhouse was included in the warrant. *State v. Sapp*, 110 Idaho 153, 715 P.2d 366 (Ct. App. 1986).

Where defendant was not a transient visitor or a mere passerby and not only was she an overnight guest at the premises described in the search warrant, but the officers had described her in their affidavit and articulated a suspicion that she was using methamphetamine, the search of defendant's purse was within the scope of the premises search warrant. *State v. Bulgin*, 120 Idaho 878, 820 P.2d 1235 (Ct. App. 1991).

—Probable Cause to Issue.

Where detective testified that reliable confidential informants had told him that defendant was a user and dealer of methamphetamine and detective also testified that defendant appeared to be under the influence of methamphetamine, appeared nervous, overly emotional, and extremely talkative and detective who at that time had been a narcotics detective for over a year, felt these behaviors were indicative of methamphetamine use, the magistrate had sufficient probable cause to issue a search warrant. *State v. Bulgin*, 120 Idaho 878, 820 P.2d 1235 (Ct. App. 1991).

Court's inquiry did not end with the conclusion that the magistrate had a substantial basis to believe that defendant was a drug dealer, and that he had drugs in his possession on the date the search warrant was issued. In order to obtain a warrant to search

defendant's residence, there must have been probable cause to believe that that was where the drugs were currently located. *State v. Molina*, 125 Idaho 637, 873 P.2d 891 (Ct. App. 1993), cert. denied, 513 U.S. 992, 115 S. Ct. 493, 130 L.Ed. 2d 403 (1994).

Under the 4th Amendment of the U.S. Constitution and Const., Art. 1, § 17, a search warrant may be issued only upon a finding of probable cause to believe that contraband or evidence of a crime will be found in the place to be searched. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

To determine whether probable cause exists in order to issue a search warrant, a magistrate must employ the totality of circumstances standard set forth in *Illinois v. Gates*, 402 U.S. 213, 103 S.Ct. 2317, 76 L.Ed. 2d 527 (1983), and make a practical, common sense decision whether, given all the circumstances set forth in the affidavit, including veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

The factors to be considered by the magistrate in application for search warrant include the reliability of, and the basis of knowledge of, persons who have supplied information that is related by the affiant or witness. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

Since in application for search warrant a common sense reading of postal inspector's affidavit reasonably identified the sources of his information as other government officials carrying out investigatory or regulatory responsibilities, and since those sources were presumptively reliable, defendant's challenge to search warrant failed. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

In application for search warrant where given a common sense interpretation federal agent's testimony indicated that her information came from the observations of state and federal law enforcement personnel and postal employees involved in the same investigation and nothing in the evidence presented contradicted the presumption that these sources were reliable there was a substantial basis for determining that probable cause existed for issuing the search warrant. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

—Signature of Judge.

Since this section, I.C.R., Rule 41 and §§ 19-4401, 19-4406 and 19-4407 require a search warrant to be signed by a magistrate or district judge in order to be valid, search warrant that was not signed even though judge testified that he intended to sign it but forgot to do so was not a valid search warrant and where officers conducted a search under

such warrant by showing the owner of the premises the affidavit of officer that was signed by judge as a witness to the officer's signature when the unsigned warrant was questioned, admittance was gained through deception and evidence obtained in such search was not admissible. *State v. Mathews*, 129 Idaho 865, 934 P.2d 931 (1997).

—Standard for Review.

The standard for reviewing magistrate's action in issuing search warrant is whether he abused his discretion in finding that probable cause existed; in considering whether the magistrate abused his discretion, the court looks to see if he had a substantial basis for concluding that probable cause existed. *State v. Turnbeaugh*, 110 Idaho 11, 713 P.2d 447 (Ct. App. 1985).

Appellate review of a magistrate's finding with regard to whether a search warrant was supported by probable cause is based upon whether there was a substantial basis, under the totality of the circumstances, for the magistrate to determine that probable cause existed. *State v. Gauna*, 117 Idaho 83, 785 P.2d 647 (Ct. App. 1989).

Where, while one officer was applying for warrant, other officers entered defendant's home without warrant and seized drugs defendant informed them about after they told him his pregnant wife could be arrested if drugs were found in common areas, since appellate court can only review those facts which were before the judge when he issued search warrant, and since appellate court was not provided with tape recording or transcript of the oral affidavit of officer obtaining warrant, court could not review whether the information supplied in support of the warrant, exclusive of any alleged reference to illegally obtained information, was sufficient to find probable cause to issue the warrant. *State v. Soto*, 127 Idaho 324, 900 P.2d 800 (Ct. App. 1995).

When probable cause to issue a search warrant is questioned on appeal, the reviewing court's function is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

—Standing to Challenge.

If a search is the product of a previous search, and a defendant's attack upon the second search is predicated wholly upon the invalidity of the first search, if the defendant has no standing to challenge the first search, then the defendant has no claim to suppress the fruits of the second search. *State v. Valdez*, 117 Idaho 302, 787 P.2d 288 (Ct. App. 1990).

—Use of Evidence.

Courts have always accepted competent and relevant evidence without question and

refused to investigate source or manner of its procurement collaterally. *State v. Myers*, 36 Idaho 396, 211 P. 440 (1922), but see *State v. Arregui*, 44 Idaho 43, 254 P. 788, 52 A.L.R. 463 (1927).

This precludes the use, in a federal prosecution, of evidence obtained in search under an illegal state search warrant, participated in by a state officer. *State v. Arregui*, 44 Idaho 43, 254 P. 788, 52 A.L.R. 463 (1927).

Formerly, the rule in Idaho was that evidence tainted by an illegal search was not thereby rendered inadmissible, (*State v. Anderson*, 31 Idaho 514, 174 P. 124 (1918)). See also *State v. Myers*, 36 Idaho 396, 211 P. 440 (1922)) but the court is now definitely committed to the converse of the formerly obtaining rule, and such evidence will now be excluded on objection. *State v. Arregui*, 44 Idaho 43, 254 P. 788, 52 A.L.R. 463 (1927), and notes, 24 A.L.R. 1408, 32 A.L.R. 408, 41 A.L.R. 1145, 52 A.L.R. 408, 88 A.L.R. 348, 134 A.L.R. 819, 150 A.L.R. 566, 50 A.L.R.2d 5.

Where the search is illegal, but is of the premises of a third party, and reveals incriminating evidence against the defendant, the illegality of the search is unavailing to exclude as evidence the fruits of the search. *State v. Dunn*, 44 Idaho 636, 258 P. 553 (1927).

Articles seized in a search of the defendant's mother's house, where the defendant did not live and was not present, with the consent and assistance of the mother, were not the fruits of unreasonable search and seizure and were admissible in evidence. *State v. Gonzales*, 92 Idaho 152, 438 P.2d 897 (1968).

Court did not err in denying suppression of evidence obtained by search conducted under a warrant issued on the basis of informant's electronically recorded testimony as the term "affidavit" is broad enough to include electronic recording. *State v. Badger*, 96 Idaho 168, 525 P.2d 363 (1974).

Because the evidence used to convict the defendant of driving under the influence was unconstitutionally obtained pursuant to a warrantless search, prior to which the police lacked individualized suspicion of criminal wrongdoing and authority to establish a roadblock, the magistrate erred in denying the defendant's motion to suppress. *State v. Henderson*, 114 Idaho 293, 756 P.2d 1057 (1988).

Field Sobriety Tests.

A police officer is only required to possess reasonable suspicion that a person is driving in violation of § 18-8004 before field sobriety tests may be administered. *State v. Ferreira*, 133 Idaho 474, 988 P.2d 700 (Ct. App. 1999), cert. denied, 529 U.S. 1038, 120 S. Ct. 1533, 146 L. Ed. 2d 348 (2000).

Fish and Game Check Stations.

The Idaho Constitution provides no greater protection than the U.S. Constitution for unreasonable searches and seizures relative to the Idaho Department of Fish and Game check stations. *State v. Thurman*, 134 Idaho 90, 996 P.2d 309 (Ct. App. 1999).

Freedom to Leave.

Where, while in defendant's house police officers controlled all ingress and egress, where one of the officers followed defendant's spouse into the kitchen and controlled access to the rear door, and where the other officer stationed himself next to the front door in the living room where defendant was located, no reasonable person would have thought they were free to leave. *State v. Bainbridge*, 117 Idaho 245, 787 P.2d 231 (1990).

Garbage.

Although the court had previously found that Article 1, § 17, of the Idaho Constitution, in some instances, provides greater protection than the parallel provision in the Fourth Amendment of the U.S. Constitution, this precedent did not justify broadening the protections of Article 1, § 17 to prohibit the warrantless search of garbage left at the curb for collection. *State v. Donato*, 135 Idaho 469, 20 P.3d 5 (2001).

Good Faith.

The Idaho constitutional prohibition against unreasonable searches and seizures is to be construed consistently with the Fourth Amendment to the federal Constitution; therefore, the "good faith" exception to the exclusionary rule applies. *State v. Rice*, 109 Idaho 985, 712 P.2d 686 (Ct. App. 1985).

The good faith exception to the exclusionary rule did not apply where the information needed to support police officer's affidavit were the fruit of a prior illegal search, application of the exclusionary rule would serve a deterrent effect, and the error was committed by law enforcement personnel — the precise group of government officials to whom the exclusionary rule has been directed. *State v. Johnson*, 110 Idaho 516, 716 P.2d 1288 (1986).

Negligent or innocent misrepresentations, even if necessary to establish probable cause, will not invalidate a warrant. *State v. Ledbetter*, 118 Idaho 8, 794 P.2d 278 (Ct. App. 1990).

The conduct of a police officer in deliberately withholding material facts, especially exculpatory facts, when applying for a search warrant is the functional equivalent of furnishing false information to the magistrate; thus, if the withholding of material facts was deliberate or constituted a reckless disregard for the truth, the "good-faith" rule established in *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984), is not

applicable. *State v. Beaty*, 118 Idaho 20, 794 P.2d 290 (Ct. App. 1990).

The fruits of a search conducted pursuant to a warrant later found to have been issued without probable cause may still be admissible under the good-faith rule, i.e., if the officers acted in objectively reasonable reliance on the invalid warrant, however, the good-faith rule does not apply in situations where: (1) the magistrate or judge issuing the warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth; (2) the issuing magistrate wholly abandoned his judicial role in such a manner or under such circumstances that no reasonably well-trained officer should rely on the warrant; (3) the warrant is based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable; or (4) the warrant is so facially deficient in failing to particularize the place to be searched or the things to be seized that the officer cannot reasonably presume the warrant to be valid. *State v. Beaty*, 118 Idaho 20, 794 P.2d 290 (Ct. App. 1990).

In General.

The Idaho constitutional provisions relating to searches and seizures and due process of law are substantially the same as those of the United States Constitution. *State v. Peterson*, 81 Idaho 233, 340 P.2d 444 (1959).

Having found "dragnet" checkpoint conducted by Department of Fish and Game to be in violation of the Fourth and Fourteenth Amendments to the U.S. Constitution, it was not necessary to determine whether it also violated this section nor whether this provision provides greater protection than its federal counterpart. *State v. Medley*, 127 Idaho 182, 898 P.2d 1093 (1995).

Informant.

When a case involves a confidential informant, an appellate court's inquiry is two-fold; first, it must consider where the unnamed person got the information; second, it must be determined whether he or she is likely to be telling the truth, and if the information provided to the magistrate fails to answer these inquiries an appellate court may examine the totality of the circumstances to determine whether the probable cause gap has been filled. *State v. Gauna*, 117 Idaho 83, 785 P.2d 647 (Ct. App. 1989).

Past reliability of informants was shown where the police affidavit in support of a search warrant averred that the informants had supplied accurate information on two prior occasions. *State v. Gauna*, 117 Idaho 83, 785 P.2d 647 (Ct. App. 1989).

The basis of an informant's knowledge can be a result of direct observation. *State v.*

Gauna, 117 Idaho 83, 785 P.2d 647 (Ct. App. 1989).

When a probable cause determination is based wholly or partially on information received from an anonymous informant the totality of the circumstances may be considered in determining whether such a substantial basis existed. *State v. Ledbetter*, 118 Idaho 8, 794 P.2d 278 (Ct. App. 1990).

Where the record contained no information relating to an informant's past reliability, however, where the informant's detailed account of defendant's marijuana growing operation supported the informant's present credibility, where the informant accurately described defendant's physical appearance, house, car, length of time lived at the house, and the esoteric fact he was using a false name for purpose of his utility bills, and where each of these facts were independently corroborated by the officer, the independent corroboration of these facts provided a substantial basis for believing the informant's statements were true. *State v. McAndrew*, 118 Idaho 132, 795 P.2d 26 (Ct. App. 1990).

Agent's omission from search warrant affidavits of the fact that a confidential informant who provided information against defendant two years before the warrants issued was no longer reliable was not material to the magistrate's finding of probable cause; that the informant later tipped off the suspect about the criminal investigation had little negative bearing on the informant's reliability at the time the information was first relayed. *State v. Patterson*, — Idaho —, 87 P.3d 967 (Ct. App. 2003).

Investigative Stop.

An investigative stop is an "intermediate response" that allows an officer, who lacks probable cause to make an arrest, to actively investigate possible criminal behavior; moreover, if an officer who makes such an investigatory stop has reason to believe that the suspect is armed and presently dangerous, the officer is entitled to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. *State v. Cook*, 106 Idaho 209, 677 P.2d 522 (Ct. App. 1984).

Where officers had watched defendant over a three-day period, discovered that defendant had registered in motels using two different addresses, observed defendant associating with people known from previous drug-trafficking investigations, discovered that defendant had placed a number of phone calls from a motel room, some to people known from previous drug investigations, observed him place a shaving-type bag beneath the spare tire of his car after exiting a residence that had been watched in the past in connection

with drug investigations, observed his strange driving behavior, which officers believed to be consistent with a person attempting to set up a drug transaction, and observed him suddenly appear relaxed after leaving a bar that had been watched during past drug investigations, taken as a whole, these articulable facts, together with rational inferences drawn from them, could give rise to a reasonable suspicion that criminal activity might be afoot creating the grounds for an investigatory stop based on the totality of the circumstances. *State v. Gallegos*, 120 Idaho 894, 821 P.2d 949 (1991).

An investigative stop is not converted into an arrest with a police officer taking the reasonable precaution of drawing weapons for their own safety; the testimony was undisputed that the police officer had drawn his weapon out of concern for his personal safety at the site of the reported criminal activity; that the officer witnessed the defendant approximately 150 feet away under circumstances and at a time and in a place that were a reasonable basis for the suspicion that the defendant had been involved with the reported crime; it was necessary for the police officer to run in order to overtake the defendant; under the circumstances, the conduct of the police officer was reasonable and not unduly coercive and the stop of the defendant was made on the basis of a police officer's reasonable suspicion of criminal activity, and was thus valid. *State v. Rawlings*, 121 Idaho 930, 829 P.2d 520 (1992).

Where police officers responded to a report of a burglary in the predawn hours, the police arrived to find visible signs of forced entry having been made to the building, the police officers believed that the perpetrator could still be on the premises, and the defendant was the only person in the area other than the police officers and the defendant who was walking away from the locale of the reported burglary, these facts, together with the reported crime, provided objectively reasonable grounds which were adequate to support a police officer's suspicion of criminal activity; these facts, in their totality, provided a basis for the trial court's conclusion that the police officer's stop of the defendant was a valid detention of a person for the purpose of investigating possible criminal activity, although there was no probable cause to make an arrest. *State v. Rawlings*, 121 Idaho 930, 829 P.2d 520 (1992).

Traffic stop constitutes a seizure that is subject to the Fourth Amendment's prohibition against unreasonable seizures; therefore, a traffic stop must be supported by reasonable and articulable suspicion that the vehicle is being driven contrary to the traffic laws or that either the vehicle or an occupant is subject to detention in connection with viola-

tion of other laws. *State v. Davis*, — Idaho —, 85 P.3d 1130 (Ct. App. 2003).

Issuance of Warrant.

Issuance of search warrant pursuant to electronically recorded testimony rather than written affidavit was not an error as former Rule of Criminal Practice and Procedure 41(c), (rescinded) authorizing such testimony and being in full force and effect, is not contradictory to this section even in view of former § 19-4404 which provided for examination of complaint and witnesses on oath before issuance of warrant. *State v. Yoder*, 96 Idaho 651, 534 P.2d 771 (1975).

Items Seized.

Where no satisfactory connection between warrant and "affidavit" was established, although the "affidavit" informed the court of the purpose of the search, the description of property to be seized was limited to the language of the warrant itself. *State v. O'Campo*, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

Where an officer conducts a search under warrant, he must have probable cause to believe that the items seized are those included in the warrant. *State v. O'Campo*, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

When conducting a search for material described in a warrant, an officer is not limited to what is immediately apparent on sight, but may open plausible repositories for such material. *State v. O'Campo*, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

Search warrants must describe the evidence to be seized, but the police are not limited to seizing only those items specifically described in the warrant; all that is required is that an item seized bear a reasonable relation to the purpose of the search. *State v. Fowler*, 106 Idaho 3, 674 P.2d 432 (Ct. App. 1983), overruled on other grounds, *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

The plain view doctrine consists of three elements: (1) at the time of the officer's observation he must be in a place where he had a legal right to be; (2) the items seized must be in "plain view"; and (3) the incriminating nature of the items must be immediately apparent. *State v. Fowler*, 106 Idaho 3, 674 P.2d 432 (Ct. App. 1983), overruled on other grounds, *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

Where the container where stolen items were found was also one of the stolen items and defendant made no colorable showing that he had a legitimate right of possession, no legitimate interest was infringed by the seizure of the container and its contents. *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

In a prosecution for lewd conduct with a minor, the district court did not err in admit-

ting into evidence certain photographs and a document entitled "And Then There Was James," where the photographs, which depicted scantily clad young men and homosexual acts, fell within the provision of the warrant providing for the search of "memorabilia of victims including photos, clothing, or other personal items," and where the document, which was written in the first person and regarded homosexual acts between the writer and a person who had the "unworried look of a 15-year-old," was properly seized pursuant to the "memorabilia" and "diary" provisions of the warrant. *State v. Lewis*, 123 Idaho 336, 848 P.2d 394 (1993).

Liberal Construction.

This provision should be liberally construed in favor of the citizen to protect him against illegal search or seizure. *Purkey v. Maby*, 33 Idaho 281, 193 P. 79 (1920).

Motion to Suppress.

Rings seen by police officer in hair of defendant which were found later on the floor of the interrogation room where defendant was questioned had been abandoned and defendant had no legitimate expectation of privacy as to them, so that motion to suppress was properly denied. *State v. Cowen*, 104 Idaho 649, 662 P.2d 230 (1983). See also, *State v. Haworth*, 106 Idaho 405, 679 P.2d 1123 (1984).

Passenger in automobile, who had no proprietary interest in such vehicle, did not have standing to challenge search of the vehicle and trial court did not err in refusing to suppress safe, tools and photographs resulting from search. *State v. Cowen*, 104 Idaho 649, 662 P.2d 230 (1983). See also, *State v. Haworth*, 106 Idaho 405, 679 P.2d 1123 (1984).

Where the defendant did not testify during the suppression hearing nor did he testify previously at the preliminary hearing, the defendant did not show that his legitimate privacy interests have been infringed. *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

One charged with a burglary resulting in theft of such property has no "automatic" standing to challenge a search. *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

—Standing.

The owner of a car who had not relinquished possession or control to a third party but was occupying the vehicle as a passenger when it was stopped and was searched subsequent to the arrest of the driver has standing to challenge the legality of the arrest and of the associated search. *State v. Foldesi*, 131 Idaho 778, 963 P.2d 1215 (Ct. App. 1998).

Owned vs. Rental Home.

There is no distinction between owned and rented living quarters; so long as a tenant has not abandoned the premises, protection of the Fourth Amendment of the United States Constitution and this section is not lost. *State v. Johnson*, 110 Idaho 516, 716 P.2d 1288 (1986).

Pen Register Installation.

Only the caller, the person called, and those with a possessory interest in the telephone have objectively reasonable expectations of privacy in information disclosed by a pen register. *State v. Brown*, 113 Idaho 480, 745 P.2d 1101 (Ct. App. 1987), cert. denied, 116 Idaho 467, 776 P.2d 829 (1988).

The installation of a pen register on a telephone line constitutes a search within the meaning of this section, and since there was no warrant based on probable cause for the installation and use of the pen register on the telephone, the information obtained by its use should have been excluded from the determination of probable cause for the issuance of the wiretap orders. *State v. Thompson*, 114 Idaho 746, 760 P.2d 1162 (1988).

Plain View.

"Plain view" is not so much an exception to the warrant requirement as it is an exclusion from the Fourth Amendment of the United States Constitution and this section. The doctrine is that if a police officer is where he has a right to be, and he sees something in plain view, the observation is not a search and the ensuing seizure ordinarily is not subject to Fourth Amendment strictures. The doctrine embodies three elements: It must be immediately apparent to the officer that the item seized is connected with criminal activity, the officer must have possessed no prior knowledge that the object would be found where he observed it, and the officer legitimately must have been at the location where he made the observation. *State v. Rusho*, 110 Idaho 556, 716 P.2d 1328 (Ct. App. 1986).

Plain view requires that three elements be satisfied: first, the officer lawfully must be in a position from which he can view the relevant area or object; second, if the officer occupies that position due to an intrusion (albeit lawful) into a place where a privacy interest exists, he must have acted for a valid law enforcement purpose other than to view the object or area in question; and third, the observed item must have an immediately apparent connection with criminal activity. *State v. Chambliss*, 116 Idaho 988, 783 P.2d 327 (Ct. App. 1989).

If a police officer is where he has a right to be, and he sees something in plain view, the observation is not a search, and this doctrine is applicable when (1) the officer's vantage point is lawfully gained, (2) the incriminating evidence discovered is a by-product of other

permissible police activity, and (3) the incriminating nature of matters viewed are immediately apparent to the officer. *State v. Limberhand*, 117 Idaho 456, 788 P.2d 857 (Ct. App. 1990).

Where a reasonably respectful citizen could not avoid seeing a hole in a partition between two public restroom stalls and whatever was on the other side, the permissible scope of the observation would depend on the location of the hole in relation to the citizen's line of sight while using the adjoining stall in a normal way. *State v. Limberhand*, 117 Idaho 456, 788 P.2d 857 (Ct. App. 1990).

Seizure of defendant's tennis shoes satisfied plain view doctrine where the officer was conducting a legal search of defendant's motel room, the officer recognized the tread as matching evidence of recent burglaries, and officer did not suspect defendant of burglary but arson and therefore did not expect to find this evidence. *State v. Knapp*, 120 Idaho 343, 815 P.2d 1083 (Ct. App. 1991).

A motion to suppress evidence obtained during a search based on a search warrant was properly denied under the plain view doctrine where an officer who had gone to the defendant's home to question him regarding a recent burglary at a gun club preceded to walk to the area of a shop located forty to fifty feet away from the house after no one answered the door at the house, and from there saw a truck which fit the description of a truck used in the burglary and which the officer could see contained boxes of ammunition, which were some of the items stolen from the gun club, and the officer then obtained the permission of the defendant's father to enter the shop, and the officer later obtained the search warrant based on the above. *Doe v. State*, 131 Idaho 851, 965 P.2d 816 (1998).

Because the officer lawfully entered the bedroom to conduct a Type I protective sweep subsequent to defendant's arrest pursuant to the warrants, and upon entering the bedroom observed, in plain view, the contraband which was the basis of the criminal charges, the evidence was lawfully seized. *State v. Northover*, 133 Idaho 655, 991 P.2d 380 (Ct. App. 1999).

Police Roadblock.

A police roadblock designed to detect and deter drunk driving is not constitutionally permissible where the police have failed to obtain a judicial warrant, have no probable cause to believe the automobile driver is engaged in criminal wrongdoing, and lack legislative authority to establish a roadblock. *State v. Henderson*, 114 Idaho 293, 756 P.2d 1057 (1988).

Privacy Interest.

Where the cabin was not owned, leased or occupied by the defendant, there was no lock

on the cabin door, and the defendant presented no evidence that he possessed any authority to restrict, or that he ever undertook to restrict, access to the cabin, an objectively reasonable privacy interest did not exist. *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

Defendant had, and his conduct reflected, a subjective expectation of privacy in a public restroom stall, where the door to the stall defendant occupied was closed at all relevant times, the position of his feet as observed from outside the stall indicated that he was using the toilet in an appropriate manner, and where he did not exhibit conduct inconsistent with a subjective expectation of privacy. *State v. Limberhand*, 117 Idaho 456, 788 P.2d 857 (Ct. App. 1990).

The privacy interest generated within a public bathroom stall is to be free from visual intrusion. *State v. Limberhand*, 117 Idaho 456, 788 P.2d 857 (Ct. App. 1990).

Once it is resolved that there is a cognizable expectation of privacy, the invasion of that privacy interest, including a visual one, will be a search subject to constitutional requirements. *State v. Limberhand*, 117 Idaho 456, 788 P.2d 857 (Ct. App. 1990).

Circumstances may exist where there may be a diminished expectation of privacy within a toilet stall. *State v. Limberhand*, 117 Idaho 456, 788 P.2d 857 (Ct. App. 1990).

When an officer makes an observation from a nonintrusive vantage point to that which is knowingly exposed to the public, the object is not subject to any reasonable expectation of privacy, however, an officer is only permitted the scope of observation ascribed to a reasonably respectful citizen. *State v. Limberhand*, 117 Idaho 456, 788 P.2d 857 (Ct. App. 1990).

An officer's unwarranted act of peering through a hole in a partition between two public restroom stalls and into the next stall, was a search for the purposes of the United States and Idaho Constitutions. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

The absence of a fence should have little effect upon the determination whether the residents may reasonably and legitimately expect privacy within and around barns, shops, garages and other outbuildings. *State v. Cada*, 129 Idaho 224, 923 P.2d 469 (Ct. App. 1996).

A covert, late night intrusion onto the driveway of defendant's home for the sole purpose of investigating suspicions of marijuana cultivation violated standards of personal privacy and individual liberty safeguarded by this section. *State v. Cada*, 129 Idaho 224, 923 P.2d 469 (Ct. App. 1996).

There is no reasonable expectation of privacy in garbage set out for collection in an area accessible to the public because there

can be no reasonable expectation of privacy in items deposited in a public area, conveyed to a third-party for collection, and readily accessible to animals, children, scavengers, snoops, and other members of the public. *State v. McCall*, 135 Idaho 885, 26 P.3d 1222 (2001).

—“Curtilage”.

If outbuildings are encompassed within curtilage, so must be grounds extending between the home and outbuildings, including paths and drives connecting them. *State v. Cada*, 129 Idaho 224, 923 P.2d 469 (Ct. App. 1996).

Curtilage encompasses the area, including domestic buildings, immediately adjacent to a home which a reasonable person may expect to remain private even though it is accessible to the public. *State v. Cada*, 129 Idaho 224, 923 P.2d 469 (Ct. App. 1996).

The marijuana garden was not within the protected curtilage of the defendant's home pursuant to this section of the Idaho Constitution even after applying all of the factors set forth by the U.S. Supreme Court concerning privacy, and giving further consideration to the rural location and setting of the defendant's property. *State v. Webb*, 130 Idaho 462, 943 P.2d 52 (1997).

Even assuming that defendant's apartment window was on the apartment's curtilage, officer's presence in this area of the curtilage from which he viewed criminal activity was not an unconstitutional intrusion because the sidewalk was impliedly open to members of the public. *State v. Morris*, 131 Idaho 562, 961 P.2d 653 (Ct. App. 1998).

Motion to suppress the evidence was denied where the officer had two warrants for defendant's arrest and defendant failed to prove that the police officer's actions of entering the curtilage and looking into the lighted basement window were unreasonable. *State v. Northover*, 133 Idaho 655, 991 P.2d 380 (Ct. App. 1999).

—Not Found.

Where the restroom was equipped with both a urinal and a toilet, thus permitting use by two people simultaneously, but with nothing to protect one user from the view of the other or from the view of anyone else who might enter the restroom, given this visual openness of the restroom interior, and the lack of any lock to exclude others while the restroom was in use, an occupant could not reasonably expect privacy, even when using the restroom for its traditional purpose. *State v. Delacerda*, 135 Idaho 903, 26 P.3d 1240 (Ct. App. 2001).

Defendant had contended that the court erred by denying his motion to suppress the evidence found during the warrantless search, arguing that he had a reasonable expectation of privacy in the bedroom where

he was living; if a defendant proved that he had an expectation of privacy that was reasonable, justifiable, or legitimate, then that objectively reasonable expectation would be recognized and protected by the Fourth Amendment, however, defendant did not have an objectively reasonable expectation of privacy in his bedroom and the warrantless search of his room was constitutionally valid. *State v. Spencer*, — Idaho —, 85 P.3d 1135 (Ct. App. 2004).

Probable Cause.

Where police were informed at about 4:00 p.m. March 15, 1976 that a shipment of 200 lbs. of marijuana would be made to a certain address on March 15 or 16, but did not begin surveillance until 5:40 p.m. March 16, the belated surveillance would not vitiate the information contained in the affidavit for search warrant, giving the informant's name, what would arrive, when and where it would arrive, since confirmatory evidence establishing information to believe it had arrived, and information as to the informant's reliability, provided an adequate basis for a determination of probable cause. *State v. Lindner*, 100 Idaho 37, 592 P.2d 852 (1979).

There was probable cause for the issuance of the search warrant where an informant's information indicated a substantial quantity of marijuana would be delivered to the residence in question, sufficient information was contained in the affidavit to establish the informant's credibility and reliability and where activity consistent with the predicted delivery was observed by law enforcement officers. *State v. Lindner*, 100 Idaho 37, 592 P.2d 852 (1979).

Where a probationer's mother informed the probation officer that her son had illegal drugs in his possession, where the son was living at his mother's home at the time, and where the officer had no reason to doubt the validity of the information, the probation officer had reasonable grounds to believe that the probationer possessed illegal drugs in violation of his probation; therefore, the probation officer's subsequent warrantless search of the probationer, which was conducted without force, during the daytime, shortly after the call from the mother was received, was a reasonable search and the drugs found were admissible at the probation revocation hearing. *State v. Pinson*, 104 Idaho 227, 657 P.2d 1095 (Ct. App. 1983).

Where affidavit, based on observations of police officers, indicated controlled substances were present in large quantities at certain address and further indicated that controlled substances were being sold at the address in question, the magistrate had a substantial basis for determining that probable cause existed for issuing a search warrant. *State v.*

Fowler, 106 Idaho 3, 674 P.2d 432 (Ct. App. 1983), overruled on other grounds, *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

The reasonableness of a police search will not be judged in retrospect according to what evidence it turned up; rather, the court must determine whether probable cause existed from that which the officer was aware of at the time he made the decision to search. *State v. Lewis*, 107 Idaho 616, 691 P.2d 1231 (1984).

Where the defendant's girlfriend told police she had been assaulted by the defendant, he had a gun, and he may have robbed the supermarket, this information, as well as the identification by the victims of the defendant as one of the robbers, was sufficient to support a reasonable belief that the defendant had violated his parole; therefore, the search of the defendant's residence was reasonably related to disclosure of the alleged violation. *State v. Vega*, 110 Idaho 685, 718 P.2d 598 (Ct. App. 1986), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

Where none of the defendants was a party to any of the pen register calls mentioned in the affidavit supporting the application for the wiretap order, and because none of the defendants alleged a possessory interest in the target telephone, they lacked standing to challenge the information gleaned from the pen register, thus, as regards these defendants, the pen register data was properly considered by the district court in determining that the wiretap was supported by probable cause. *State v. Brown*, 113 Idaho 480, 745 P.2d 1101 (Ct. App. 1987), cert. denied, 116 Idaho 467, 776 P.2d 829 (1988).

Excluding the information obtained through the use of the pen register, there was not a substantial basis for belief that particular communications concerning the offense of dealing in marijuana would be obtained through the wiretap or that the defendant's phone was being used, or was about to be used, in connection with the commission of the offense, as required by subdivisions (3)(b) and (d) of § 18-6708. *State v. Thompson*, 114 Idaho 746, 760 P.2d 1162 (1988).

Where, in a prosecution for possession of marijuana, an informant described the purplish color of the marijuana plants, the tarps upon which they grew, the house in which they were located and the dates of his observation, and offered facts which were not generally known and which were verified by the police, the magistrate had a substantial basis to conclude that probable cause existed for the issuance of a search warrant, and the evidence discovered was admissible. *State v. Lindsey*, 115 Idaho 184, 765 P.2d 695 (Ct. App. 1988), cert. denied, 115 Idaho 795, 770 P.2d 804 (1989).

Magistrate had a substantial basis for de-

termining that probable cause existed to issue the search warrant where affidavit submitted by officer to the magistrate contained information concerning defendant's drug trafficking organization, where FBI informant indicated he had witnessed defendant make drug deliveries and he had overheard a conversation wherein defendant indicated he was planning to soon make another drug delivery, and where officer's own investigation and tips from other informants corroborated much of this information. *State v. Burnside*, 115 Idaho 882, 771 P.2d 546 (Ct. App. 1989).

Where police officers in answer to domestic disturbance call at a residence involving defendant which call stated that weapons were involved, after determining that everything was all right at the residence, stopped defendant driving away in his vehicle and after determining that defendant was on the borderline of being under the influence for driving purposes, decided to search the vehicle as they concluded that defendant could possibly pose a risk of danger to law enforcement officers since they had been told weapons were involved, and they cuffed defendant and placed him in patrol car prior to the search, the officers employed a degree of force which exceeded that justified for an investigatory detention and which, therefore, amounted to an arrest, and as they lacked probable cause to believe at the point in time they cuffed defendant, that he had committed any offense, such arrest was unlawful; therefore, search of defendant's truck, during which officers found marijuana, could only have been conducted as incident to the unlawful arrest and was also unlawful. *State v. Pannell*, 127 Idaho 420, 901 P.2d 1321 (1995).

Where the state failed to point to any evidence showing a connection between a shed on a property and the vehicles believed to be involved in the production of methamphetamine, there was no probable cause to suspect that the items sought might be anywhere except in those vehicles and no probable cause for issuance of a search warrant for the shed. *State v. Schaffer*, 133 Idaho 126, 982 P.2d 961 (Ct. App. 1999).

A police officer's descriptions of amateur photographs of young teenage girls which he had observed were sufficient to provide probable cause for the issuance of a search warrant. *State v. Weimer*, 133 Idaho 442, 988 P.2d 216 (Ct. App. 1999).

—Affidavit.

The affidavit for probable cause must be evaluated as a whole to determine whether it was sufficient to establish probable cause for the issuance of a search warrant. *State v. Fowler*, 106 Idaho 3, 674 P.2d 432 (Ct. App. 1983), overruled on other grounds, *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

Although the two-pronged test requiring that an affidavit based at least partially on hearsay must demonstrate the reliability of the source of the information, and present a sufficient factual basis for that information, is no longer a "rigid requirement," the credibility and basis of knowledge of the informant should still be considered in an evaluation of probable cause. *State v. Fowler*, 106 Idaho 3, 674 P.2d 432 (Ct. App. 1983), overruled on other grounds, *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

Where defendant contended that seized evidence should have been suppressed because the affidavit in support of the search warrant contained a false statement, and where defendant asserted that officer's observation, that defendant's car door panel was replaced, was controverted at the suppression hearing, defendant failed to demonstrate that the statement would have affected the probable cause determination since absent the statement concerning the door panel, the affidavit nevertheless contained information sufficient for a probable cause determination. *State v. Burnside*, 115 Idaho 882, 771 P.2d 546 (Ct. App. 1989).

Although the negligent falsehoods in the affidavit in support of a search warrant were insufficient to justify suppression of the evidence, under the "totality of circumstances" test, judge did not have before him sufficient facts necessary to find probable cause and had abused his discretion in issuing the search warrant where the affidavit in support of the search warrant offered practically no basis of knowledge from which the informant's statements could be independently tested but merely offered only conclusory statements. *State v. Guzman*, 122 Idaho 981, 842 P.2d 660 (1992).

Where omissions in detective's affidavit in support of a search warrant did not disclose that the undisclosed informant was a paid informant, where two of the prior arrests and convictions, in which the undisclosed informant proved his reliability, occurred approximately eight years earlier, and the third arrest and conviction referred to in the affidavit was in fact a probation violation in which the informant did not provide wholly accurate information, these omissions in the affidavit amounted only to negligible falsehoods insufficient to invalidate a warrant. *State v. Guzman*, 122 Idaho 981, 842 P.2d 660 (1992).

The affidavit for a search warrant of a law enforcement agent which does not specifically identify each source may, nonetheless, be sufficient to support probable cause if a reader could reasonably infer that the information came from other law enforcement personnel. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

A magistrate could properly and reasonably rely on a common-sense reading of a police officer's affidavit, and had a substantial basis for finding that, contained within the items seized by the police, there was evidence that the defendant made photographic recordings of a minor child with the intent to gratify the lust, passions, or sexual desire of the actor, minor child, or a third party. *State v. Weimer*, 133 Idaho 442, 988 P.2d 216 (Ct. App. 1999).

—Detention.

Where having obtained a warrant, the sheriff led a contingent of law enforcement officers upon a search for marijuana at the home of defendants and when the officers arrived, defendant met them outside, near their vehicles and after they showed him the search warrant, they handcuffed him and detained him in a police car while the search was conducted and some 90 minutes later, advised him that he was under arrest. If the search warrant was founded upon probable cause, the detention was permissible. *State v. Schaffer*, 107 Idaho 812, 693 P.2d 458 (Ct. App. 1984).

—Evidence.

The probable cause required for a search warrant necessitates a finding that evidence is probably connected with some criminal activity and that the evidence being sought can currently be found at a specific place. *State v. Turnbeaugh*, 110 Idaho 11, 713 P.2d 447 (Ct. App. 1985).

Whether information regarding the presence of items in a particular place is stale depends upon the nature of the factual situation involved; continuing criminal activity, such as narcotics trafficking, is one factual scenario where evidence may not become stale for extended periods of time. *State v. Turnbeaugh*, 110 Idaho 11, 713 P.2d 447 (Ct. App. 1985).

Although the two-pronged test set forth in *Spinelli v. United States*, 393 U.S. 410, 80 S. Ct. 584, 21 L. Ed. 2d 637 (1969) and *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964), whereby the police were required to show the veracity of a confidential informant and the basis of his knowledge, has been supplanted, it is still useful in evaluating whether a magistrate has a substantial basis to determine the existence of probable cause. *State v. Gauna*, 117 Idaho 83, 785 P.2d 647 (Ct. App. 1989).

A magistrate's evaluation of probable cause is based on facts set forth in an affidavit or any sworn, recorded testimony given in support of the search warrant. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

Evidence offered in support of an application for a search warrant may include hearsay, provided there is substantial basis for crediting the hearsay. *State v. Wilson*, 130

Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

—Exigent Circumstances.

Probable cause and a compelling emergency, such as imminent destruction of evidence or immediate danger to persons or property, must be shown in order to have exigent circumstances; the warrantless search may not go beyond the need created by the exigency. *State v. Rusho*, 110 Idaho 556, 716 P.2d 1328 (Ct. App. 1986).

Considering the odor of alcohol on defendant's breath, the appearance of his eyes, the results of a horizontal nystagmus test, and the detection of a plastic bag in his partially open mouth as he vigorously chewed, police officers had a reasonable basis to believe that the defendant was attempting to destroy contraband, that he might asphyxiate or overdose on the bag or its contents, and that the circumstances revealed a compelling need for immediate action. *State v. Holton*, 132 Idaho 501, 975 P.2d 789 (1999).

—Explanation of Officer.

An officer's explanation for searching an automobile is not controlling. The lawfulness of a search is to be determined by the court, based upon an objective assessment of the circumstances which confronted the officer at the time of the search. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

—Reasonable Suspicion.

Reasonable suspicion only requires articulable facts and inferences supporting a reasonable belief. *State v. Slater*, 133 Idaho 882, 994 P.2d 625 (Ct. App. 1999).

While attempting to stop the vehicle, the officer observed that all three occupants were moving excessively about the interior of the car for a period before the driver finally brought the vehicle to a stop. From this excessive activity, followed by the discovery of drugs in the automobile, an officer could reasonably infer that all of the occupants had been taking steps to conceal the contraband in the car, and this evidence, together with defendant's physical position on the seat next to the backpack, would lead a prudent person to entertain an honest and strong suspicion that defendant had knowledge and control of the contraband in the backpack. And although this evidence might have been insufficient to convict defendant for possession of the drugs in the backpack, it was adequate to create probable cause for his arrest. *State v. Zentner*, 134 Idaho 508, 5 P.3d 488 (Ct. App. 2000).

An officer may stop a vehicle to investigate possible criminal behavior if there is articulable and reasonable suspicion that the vehicle is being driven contrary to traffic laws; when officer saw that one of the headlights on the vehicle defendant was driving was on

while the other was not, he had reasonable cause to believe defendant was operating a vehicle in violation of § 49-902(1), which is an infraction pursuant to § 49-905. *State v. Evans*, 134 Idaho 560, 6 P.3d 416 (Ct. App. 2000).

Officer had reasonable suspicion that a serious felony had been committed and, having observed two persons matching the general description of the suspects in the only car on the road at this late hour, he was justified in conducting a Terry traffic stop. *State v. Butcher*, 137 Idaho 125, 44 P.3d 1180 (Ct. App. 2002).

—Suspicion of Criminal Activity.

Stop was valid because the facts as found by the district court provided objectively reasonable grounds to support the officer's suspicion of criminal activity, where the officer responded at night to a reported burglar alarm at a building that the officer was aware had been burglarized and vandalized in the recent past, and defendant was the only person at the scene of the reported alarm other than the officer. *State v. Robertson*, 134 Idaho 180, 997 P.2d 641 (Ct. App. 2000).

—Totality of the Circumstances.

When determining whether sufficient probable cause exists to issue a search warrant, a magistrate must bring to the task a common sense approach, considering the totality of the circumstances; in the end, the magistrate must conclude that there exists a fair probability that contraband will be discovered in a particular place. *State v. Shepherd*, 118 Idaho 121, 795 P.2d 15 (Ct. App. 1990).

Appellate analysis of probable cause is governed by whether information received from an anonymous informant established probable cause under the "totality of the circumstances." *State v. McAndrew*, 118 Idaho 132, 795 P.2d 26 (Ct. App. 1990).

When the appellate court reviews a trial court's decision to issue a search warrant, its function is to ensure that the trial court had substantial basis to conclude that probable cause existed, giving great deference to the court's decision; in such cases the appellate court applies the "totality of the circumstances" test announced in *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983). *State v. Soto*, 127 Idaho 324, 900 P.2d 800 (Ct. App. 1995).

The "Type II" protective sweep requirements as set out in *Maryland v. Buie*, 494 U.S. 325, 110 S.Ct. 1093 (1990), were satisfied because the exact number of occupants was unknown, there was no response to the officers repeated knock and announce, defendant who was suspected of being involved in violent crimes and drugs attempted to flee and hide, and the officers reasonably believed a protective sweep was

necessary under the totality of the circumstances. *State v. Slater*, 133 Idaho 882, 994 P.2d 625 (Ct. App. 1999).

—Valid Search.

Where the police were informed of an armed robbery and were aware that, just before the robbery, a man fitting defendant's general description had been seen in the vicinity wearing a heavy coat, despite the warm weather, and what appeared at that time to be a stocking cap and where, when stopped, the defendant attempted to leave the scene and, when ordered to return, was seen to have what then appeared to be a ski mask protruding from his back pocket, these facts, considered together and viewed in light of practical considerations of everyday life, would lead an ordinarily prudent and cautious police officer to believe, or to entertain an honest and strong suspicion, that defendant had participated in the reported robbery; consequently, the arrest of defendant was supported by reasonable cause and that the search of his pocket was valid. *State v. Cook*, 106 Idaho 209, 677 P.2d 522 (Ct. App. 1984).

If a search is conducted pursuant to a warrant, the burden of proof is on the defendant to show that the search was invalid. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

Court, in defendant's drug case, erred by suppressing evidence where there was probable cause supporting the search warrant as a confidential informant made a buy from defendant at the house, and a detective observed defendant at the house. *State v. Nunez*, 138 Idaho 636, 67 P.3d 831 (2003).

District court did not err in denying defendant's motion to suppress where the search of defendant's vehicle, including the trunk area, was justified under the automobile exception to the warrant requirement where the facts were sufficient to support the officer's probable cause to believe defendant had committed the crime of carrying a concealed weapon. *State v. Veneroso*, 138 Idaho 925, 71 P.3d 1072 (Ct. App. 2003).

Probationers.

A probation officer may make a warrantless search of a probationer if (a) he has reasonable grounds to believe that the probationer has violated some condition of probation and (b) the search is reasonably related to disclosure or confirmation of that violation. *State v. Pinson*, 104 Idaho 227, 657 P.2d 1095 (Ct. App. 1983); *State v. Vega*, 110 Idaho 685, 718 P.2d 598 (Ct. App. 1986), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

Intrusions upon a probationer's privacy which do not relate to proper administration of probation are invalid, and therefore, a warrantless search of a probationer cannot be based upon a mere hunch without factual

basis, nor upon casual rumor, general reputation, or mere whim. *State v. Pinson*, 104 Idaho 227, 657 P.2d 1095 (Ct. App. 1983).

To ensure that probationers comply with the terms of their probation, warrantless searches of probationers conducted by probation officers are sometimes justified, and if the justification for such a search is called into question, it can then be judicially examined. Requiring judicial intervention before a search, through the warrant process, would unduly impair the probation system. *State v. Pinson*, 104 Idaho 227, 657 P.2d 1095 (Ct. App. 1983).

The special and unique interest which probation authorities have in invading the privacy of probationers through warrantless searches does not extend to law enforcement officers generally. *State v. Pinson*, 104 Idaho 227, 657 P.2d 1095 (Ct. App. 1983).

Probation officers have the authority to visit a probationer's home or place of employment without having to procure a warrant, and since the probation officer's authority puts him lawfully in the probationer's home, he can seize contraband and instruments of crime in plain view there. In addition, for his own safety, the probation officer can frisk the probationer without consent. *State v. Pinson*, 104 Idaho 227, 657 P.2d 1095 (Ct. App. 1983).

It is impermissible for the police to use parole officers in lieu of a warrant to search, when conducting a criminal investigation, but nothing precludes mutually beneficial cooperation between law enforcement officials and parole officers. *State v. Vega*, 110 Idaho 685, 718 P.2d 598 (Ct. App. 1986), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

Searches conducted pursuant to the administration of probation or parole are an exception to warrant requirement; however, the state must show that such a warrantless search conducted by a parole officer was reasonable and that he had reasonable grounds to believe that the parolee violated some parole condition and the search was reasonably related to disclosure or confirmation of that violation; moreover, the parole officer may enlist the aid of the police when conducting such a justified search. *State v. Vega*, 110 Idaho 685, 718 P.2d 598 (Ct. App. 1986), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

There is no blanket prohibition against including a waiver of Fourth Amendment rights as a condition of probation whenever the offense for which probation is imposed is a misdemeanor. *State v. Josephson*, 125 Idaho 119, 867 P.2d 993 (Ct. App. 1993).

Defendant voluntarily consented to searches of his person and property contained in his probation agreement despite defendant's contention that his consent was coerced because, had he refused to sign, he would have been arrested for refusal to comply with

the terms of probation. *State v. Josephson*, 125 Idaho 119, 867 P.2d 993 (Ct. App. 1993).

Property in Possession of Accused.

If, in making search for weapons, evidence of crime is discovered, such evidence is not inadmissible because found and taken without authority of search warrant, for such search and seizure is not unreasonable within prohibition of this section. *State v. Anderson*, 31 Idaho 514, 174 P. 124 (1918). Compare with *State v. Arregui*, 44 Idaho 43, 254 P. 788, 52 A.L.R. 463 (1927).

Property found in possession of defendant at time of his lawful arrest may be used by prosecution against him at trial. *State v. Myers*, 36 Idaho 396, 211 P. 440 (1922).

Papers of accused seized at time of defendant's lawful arrest may be used in evidence against him and are not violative of constitutional provisions, search being justified as incident of lawful arrest. *State v. Myers*, 36 Idaho 396, 211 P. 440 (1922).

Search and seizure made incidental to a lawful arrest is not prohibited as being unreasonable within the meaning of this section and evidence seized is not thereby rendered inadmissible. *State v. Conner*, 59 Idaho 695, 89 P.2d 197 (1939); *State v. Wilson*, 62 Idaho 282, 111 P.2d 868 (1941).

Search and seizure, made incidental to a lawful arrest, is not prohibited as being unreasonable within the meaning of the Idaho Constitution, and evidence seized is not thereby rendered inadmissible. *State v. Polson*, 81 Idaho 147, 339 P.2d 510 (1959).

The discovery of stolen property in an automobile by looking through the window with the aid of a flashlight, without opening or entering the automobile, was not a search. *State v. Loyd*, 92 Idaho 20, 435 P.2d 797 (1967).

Where a warrant authorizes the search of the defendant's luggage and person, a jacket which he carried on his arm, but put down before being searched, was within the scope of places to be searched under the warrant. *State v. O'Campo*, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

Protective Sweeps.

The protective sweep warrant exception applies when officers are executing a search warrant, provided that the articulable facts, when taken together with the rational inferences which can be drawn from those facts, would warrant a reasonably prudent officer believing that an individual posing a danger is in the area to be swept, and where the sweep lasts no longer than is necessary to dispel the reasonable suspicion of danger or, at the latest, no longer than it takes to complete the arrest and leave. *State v. Schaffer*, 133 Idaho 126, 982 P.2d 961 (Ct. App. 1999).

Because the bedroom searched by the of-

ficer was immediately adjoining the place of defendant's arrest, the officer could, as a precautionary matter and without probable cause or reasonable suspicion, enter the bedroom and perform a Type I *Blue* protective sweep. *State v. Northover*, 133 Idaho 655, 991 P.2d 380 (Ct. App. 1999).

Where officers observed a holster in the defendant's home during a protective sweep, but did not seize it at that time, a later entry and seizure of the holster were constitutionally unreasonable, and the holster should have been suppressed. *State v. Prewitt*, 136 Idaho 547, 38 P.3d 126 (Ct. App. 2001).

Purpose.

The purpose of this section is to safeguard the privacy of citizens by insuring against the search of premises where probable cause is lacking. *State v. Yoder*, 96 Idaho 651, 534 P.2d 771 (1975).

The Fourth Amendment of the United States Constitution and this section are designed to protect a person's legitimate expectation of privacy, which society is prepared to recognize as reasonable. *State v. Johnson*, 110 Idaho 516, 716 P.2d 1288 (1986).

The purpose of this section is to protect a person's legitimate expectation of privacy. *State v. Bainbridge*, 117 Idaho 245, 787 P.2d 231 (1990).

Search.

—Admissible Evidence.

Where defendant's arrest was legal on the basis of his violation of a civil protection order (CPO), and where defendant consented to a search of his duffel bag immediately following his arrest, the evidence found in the duffel bag as a result of the search was properly admissible. *State v. Whiteley*, 124 Idaho 261, 858 P.2d 800 (Ct. App. 1993).

—Automobile.

After lawfully arresting defendant, police officers were entitled to seize contraband found under the passenger seat and in the glove compartment of defendant's vehicle. Police officers, after making a lawful custodial arrest of the occupant of an automobile, may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile; additionally, such a search of the passenger compartment enables the police to examine the contents of any containers found within the passenger compartment of the vehicle, and since a container can be any object capable of holding another object, a closed or open glove compartment meets the definition of container. *State v. Chambliss*, 116 Idaho 988, 783 P.2d 327 (Ct. App. 1989).

Where police ordered defendant to exit his van, although (1) he did not drive erratically, (2) he was not slumped over the steering

wheel, (3) he simply parked, shut off the lights and engine, laid across the passenger seat and fell asleep, (4) the officers had not received any reports that may have aroused their suspicion of defendant or his van, (5) there was no testimony that the police were looking for a particular individual or vehicle wanted in connection with other criminal activities, (6) defendant was legally parked in a place where he had a right to be, and (7) apparently no traffic laws or other law had been violated, there was no reasonable articulable suspicion that could form the basis of a lawful seizure. *State v. McAfee*, 116 Idaho 1007, 783 P.2d 874 (Ct. App. 1989).

Where defendant neither owned nor occupied an automobile that was illegally searched, and where the items seized—laboratory hardware—did not intrinsically suggest the existence of a legitimate privacy interest, no constitutional right personal to defendant was violated by the search. *State v. Valdez*, 117 Idaho 302, 787 P.2d 288 (Ct. App. 1990).

An officer who makes a lawful custodial arrest of the occupant of an automobile may search the passenger compartment of the automobile and examine the contents of any container found within. *State v. Heer*, 118 Idaho 98, 794 P.2d 1154 (Ct. App. 1990).

Police officers are authorized to search any compartments or containers in a car which may conceal contraband, if the search of the car itself is supported by probable cause; additionally, it does not matter that the car was at the police station when the trunk was searched. *State v. Heer*, 118 Idaho 98, 794 P.2d 1154 (Ct. App. 1990).

When an officer has probable cause to search a vehicle, the law permits both an immediate warrantless search and a subsequent warrantless station house search. *State v. Heer*, 118 Idaho 98, 794 P.2d 1154 (Ct. App. 1990).

Officer had reasonable and articulable suspicions with regard to stopping the vehicle being driven by defendant where defendant was observed to be engaged in inattentive driving, and where defendant was not the owner of said vehicle, he had no standing to challenge the subsequent search to which the owner consented. *State v. Munhall*, 118 Idaho 602, 798 P.2d 61 (Ct. App. 1990).

The constitutionally permissible scope of an automobile search extends to any "container," whether it be opened or closed, found within the passenger compartment of the automobile, and "container" here denotes any object capable of holding another object; it thus includes closed or open glove compartments, consoles, or other receptacles located anywhere within the passenger compartment, as well as luggage, boxes, bags, clothing and the like; this, however, encompasses only the in-

terior of the passenger compartment of an automobile and does not encompass the trunk. *State v. Shepherd*, 118 Idaho 121, 795 P.2d 15 (Ct. App. 1990).

A police officer had probable cause to search the trunk of an automobile once marijuana was discovered in a backpack in the passenger compartment of said automobile; therefore, the search and seizure of marijuana found in a closed cooler of the trunk of defendant's automobile was lawful. *State v. Shepherd*, 118 Idaho 121, 795 P.2d 15 (Ct. App. 1990).

Where there were passengers in an automobile that was subject of a search, being legitimately on the premises was not determinative of a legitimate expectation of privacy in the areas of the automobile search, such as would entitle them to standing. *State v. Ryan*, 117 Idaho 504, 788 P.2d 1327 (1990).

The defendant's appeal from an Idaho Criminal Rule 11 conditional plea of guilty to possession of a controlled substance with intent to deliver in violation of I.C. § 37-2732 was properly denied. The defendant was arrested for failure to maintain insurance, in violation of I.C. § 49-1229 and a subsequent search of his automobile uncovered cocaine and other drug paraphernalia; the defendant sought to suppress the evidence seized, contending that the search of his vehicle was an unconstitutional search and seizure and that the Idaho Constitution provided more protection than afforded by the Fourth Amendment of the U.S. Constitution, however the trial court properly denied the suppression motion. *State v. Wheaton*, 121 Idaho 404, 825 P.2d 501 (1992).

Where police officers discovered cocaine and scales in the console of defendant's vehicle, after he was arrested for the misdemeanor charge of operating a motor vehicle without liability insurance, the Court of Appeals upheld the search and seizure of evidence as a search incident to arrest. *State v. Wheaton*, 121 Idaho 727, 827 P.2d 1174 (Ct. App. 1991).

Police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained; therefore, the warrantless search of defendant's automobile fell within the automobile exception to the warrant requirement and the fact that the contraband was contained in a particular container in the trunk of the car was irrelevant. *State v. Gallegos*, 120 Idaho 894, 821 P.2d 949 (1991).

Where evidence was seized as a result of an investigatory stop that became unreasonable due to the illegal detention of the driver, then the evidence was obtained unlawfully also as to the passengers, who had standing under *State v. Haworth*, 106 Idaho 405, 679 P.2d 1123 (1984), to challenge the reasonableness

of the derivative detention resulting from the investigatory stop. *State v. Luna*, 126 Idaho 235, 880 P.2d 265 (Ct. App. 1994).

When the police have lawfully impounded an automobile in carrying out their community caretaking function, they are permitted to inventory its contents, but if the impoundment violates this section, the accompanying inventory is also tainted, and evidence found in the search must be suppressed. *State v. Weaver*, 127 Idaho 288, 900 P.2d 196 (1995).

Where officer testified that he would not have authority to impound a vehicle if the owner of the vehicle: (1) was not under arrest; (2) had a valid driver's license; and (3) claimed to be capable of driving, the impoundment of the vehicle was not reasonable; consequently, the state failed to meet its burden of proving that the warrantless search of the vehicle fell within the inventory exception to the warrant requirement. *State v. Weaver*, 127 Idaho 288, 900 P.2d 196 (1995).

Where police officer had observed defendant and his girl friend taking items from donation box and when he stopped their car and questioned them they admitted taking items from the box and returned several item to the officer, officer had probable cause to make a warrantless search of the auto including the small cubbyhole in the front console where drugs were found under the automobile exception to requirement of a warrant to conduct a legal search. *State v. Murphy*, 129 Idaho 861, 934 P.2d 34 (Ct. App. 1997).

In prosecution for possession of a controlled substance found in patrol car in which defendant was placed after his arrest on an outstanding warrant, defendant's rights against illegal search and seizure were not violated where evidence showed that seizure of defendant did not occur when the police officers first arrived at the residence and defendant came out in response to the officer's commands, as contended by defendant, but only after defendant was arrested upon an outstanding warrant discovered after an outstanding warrant check was made and defendant placed in the patrol car. *State v. Fuentes*, 129 Idaho 830, 933 P.2d 119 (Ct. App. 1997).

When a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile and may examine the contents of any containers found. *State v. Charpentier*, 131 Idaho 649, 962 P.2d 1033 (1998).

A search incident to a lawful custodial arrest of the occupant of an automobile which was limited to the passenger compartment and containers within it was a valid search incident to arrest under this section. *State v. Harvill*, 131 Idaho 720, 963 P.2d 1157 (1998).

The automobile exception allows police of-

officers to conduct warrantless searches of automobiles if they have probable cause to believe that an automobile contains contraband or evidence of a crime, and where officers stopped a vehicle that fit the description of that used in a burglary and saw a sweatshirt in the car, and an officer had heard a witness describe the sweatshirt that the burglar was wearing and had been told that the passenger had removed a blue sweatshirt after being stopped, the seizure of the sweatshirt was valid. *State v. Buti*, 131 Idaho 793, 964 P.2d 660 (1998).

The court applied the three factors of the balancing test set out in *Brown v. Texas*, 443 U.S. 47, L.Ed.2d 357, 99 S.Ct. 2637 (1979), and concluded that checkpoint stops of hunters were a minimally restrictive means of advancing the government's compelling interest in wildlife preservation. *State v. Thurman*, 134 Idaho 90, 996 P.2d 309 (Ct. App. 1999).

Idaho Code § 49-1407(1) allowed officers to arrest when the officer had reasonable and probable grounds to believe the person would disregard a written promise to appear in court on misdemeanor traffic violations; thus, where pursuant to a violation defendant was stopped and had no driver's license, no proof of insurance, the registration defendant produced was for a different vehicle, and the vehicle's license plates were fictitious, the officer had grounds to arrest, and the search of defendant's vehicle incident to that arrest, which revealed methamphetamine, was upheld. *State v. Brown*, — Idaho —, 85 P.3d 683 (Ct. App. 2004).

—By Landlord.

A search by a landlord, although not consented to by the tenant, implicated no interests of the Fourth Amendment of the United States Constitution or this section because those provisions only prohibit illegal governmental searches and seizures. *State v. Johnson*, 110 Idaho 516, 716 P.2d 1288 (1986).

—Exceeding Scope of Warrant.

Where a search warrant authorized the search only of a truck and a bus located in the backyard of a house, officers were not entitled to enter a shed on the property. *State v. Schaffer*, 133 Idaho 126, 982 P.2d 961 (Ct. App. 1999).

—Night.

To justify nighttime execution of a warrant, the affidavit must show reasonable cause for conducting the search at night and must be positive that controlled substances were in the place to be searched. *State v. Fowler*, 106 Idaho 3, 674 P.2d 432 (Ct. App. 1983), overruled on other grounds, *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

While § 19-4411 requires "positive" facts showing that the property is in the place to be

searched before a warrant for a night search may issue, I.C.R. 41 (c) provides that the authority issuing the warrant may, by appropriate provision in the warrant, and for reasonable cause shown, authorize its execution at times other than daytime. To the extent that these requirements for a night search conflict, the standard of reasonable cause in I.C.R. 41(c) controls over the provisions of § 19-4411; thus, where the magistrate's issuance of a warrant for a nighttime search was based upon reasonable cause to believe that contraband was in fact upon the premises to be searched and that a nighttime search was reasonable, "reasonable cause," within the meaning of I.C.R. 41 (c), existed for the issuance of a nighttime search warrant. *State v. Lewis*, 107 Idaho 616, 691 P.2d 1231 (1984).

—Pat-down.

Detective's observations, regarding the movements defendant made while a passenger in a vehicle being pursued by police, coupled with his knowledge that defendant had been carrying a weapon during a previous arrest, were sufficient grounds for detective to order the pat-down search. *State v. Wight*, 117 Idaho 604, 790 P.2d 385 (Ct. App. 1990).

There was no authority for the proposition that the declaration by officer that he desired to "pat him (defendant) down" turned a permissible "Terry" stop into a "search" for identification; the record reflected that officer did not touch defendant or take any action other than the quoted statement before the defendant attempted to abandon his drugs. *State v. Rawlings*, 121 Idaho 930, 829 P.2d 520 (1992).

Pat-down search of defendant was justifiable where the officer's encounter with defendant occurred at a home subject to search for suspected drug manufacturing activity, there were specific and articulable facts known to the officer which would lead a reasonable, prudent person to believe that defendant could be armed and dangerous, and defendant motioned that he did have a weapon. *State v. Dreier*, — Idaho —, 76 P.3d 990 (Ct. App. 2003).

—Private.

Where airport narcotics police had given business cards and profile sheets to airline employees and had given them awards when they provided the police with packages containing controlled substances, airline employee who conducted search of package containing a substance which was later determined to be a controlled substance, who stated that she never saw the profile sheets, that she did not receive any training from the police, that she did not expect to receive a payment when she opened the package, but was simply doing her duty as a citizen, was not an agent of the police and her search was a private search, and thus, defendant's

Fourth Amendment rights were not impaired. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

—Subsequent to Illegal Arrest.

The district court erred in denying a defendant's motion to suppress evidence which was obtained in a search of the defendant's automobile after the driver of the vehicle was arrested, as the arrest of the driver for driving with an expired license was illegal and the defendant, who was a passenger in the vehicle, retained a reasonable expectation of privacy in his vehicle which was violated by the search subsequent to the illegal arrest. *State v. Foldesi*, 131 Idaho 778, 963 P.2d 1215 (Ct. App. 1998).

—Warrantless.

A warrantless search is per se unreasonable and the fruits of that search are normally suppressible, unless the search represents an exception to the warrant requirement. *State v. Vega*, 110 Idaho 685, 718 P.2d 598 (Ct. App. 1986), disapproved on other grounds, *State v. Pecor*, 132 Idaho 359, 972 P.2d 737 (Ct. App. 1998).

A search without a warrant is deemed "unreasonable" per se unless the government shows that the search comes within one of several judicially recognized exceptions to the warrant requirement; among the recognized exceptions are consent and exigent circumstances. *State v. Rusho*, 110 Idaho 556, 716 P.2d 1328 (Ct. App. 1986).

Where police received a tip from an informant that the defendant would be carrying controlled substances from Boise to Idaho Falls, on a specific date, in a yellow Subaru station wagon, with a gun, and the informant identified defendant's picture, there was sufficient probable cause to conduct a warrantless search of defendant's vehicle when she was stopped. *State v. Williams*, 120 Idaho 386, 816 P.2d 342 (1991).

Warrantless search of a defendant's vehicle was valid where police officer had made a lawful custodial arrest of the defendant as she attempted to back the vehicle out of its parking spot and such search was conducted as a result of such arrest. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

Although warrantless searches are presumptively unreasonable, the burden of proof rests with the state to demonstrate that the search either fell within a well-recognized exception to the warrant requirement or was otherwise reasonable under the circumstances. *State v. Weaver*, 127 Idaho 288, 900 P.2d 196 (1995).

A protective sweep is not constitutionally permissible unless the officer holds an objectively reasonable suspicion, based on articulable facts, that the place to be searched harbors an individual who poses a threat to

officers at the scene; the general desire to be sure no one is hiding in the place searched is not sufficient to meet this requirement. *State v. Slater*, 133 Idaho 882, 994 P.2d 625 (Ct. App. 1999).

Defendant did not maintain a reasonable expectation of privacy in the gym bag where defendant, by leaving his gym bag partially open revealing illegal contraband inside, by telling the officer the contents of the bag, and by offering to retrieve the bag for the officer, defendant failed to exhibit a subjectively or objectively reasonable expectation of privacy in the bag such that the warrantless search of the bag was constitutionally permissible. *State v. Dreier*, — Idaho —, 76 P.3d 990 (Ct. App. 2003).

—Weapons.

Where search of defendant's person did not overstep the limits of a weapons search, but simply consisted of patting down clothing and removing in that process hard compact objects which were potentially weapons and which were revealed to be two guns and a police scanner, motion to suppress was properly denied. *State v. Cowen*, 104 Idaho 649, 662 P.2d 230 (1983).

Where officers had reason to make investigative stop of defendant, but no evidence was presented that the searching officer believed the wad of money in defendant's pants pocket felt like a weapon, the actions of officers in removing the money from his pocket, went beyond the permitted scope of a frisk for weapons. *State v. Cook*, 106 Idaho 209, 677 P.2d 522 (Ct. App. 1984).

When police officer, during an investigative stop, reached into defendant's pocket, rather than conducting a "pat-down" search for weapons, the scope of a permissible investigative stop was exceeded; therefore, in this case, the time of the arrest — for the purpose of testing the existence of reasonable cause — was coincident with the search itself. *State v. Cook*, 106 Idaho 209, 677 P.2d 522 (Ct. App. 1984).

The record supported the court's finding that the detectives had articulable facts from which they could reasonably believe that they may have been in danger and could protect themselves by conducting a frisk for weapons where: (1) the detectives were encountering a burglary suspect; (2) he was wearing a long wool coat that seemed out of place for the weather of the day, and which could have been used to conceal weapons; (3) the suspect appeared nervous and was sweating; and (4) one detective observed a bulge in an exterior pocket of the suspect's coat. *State v. Simmons*, 120 Idaho 672, 818 P.2d 787 (Ct. App. 1991).

Search Warrants.

A search warrant may issue only upon a finding of probable cause. *State v. Mason*, 111

Idaho 916, 728 P.2d 1325 (Ct. App. 1986).

Although an appellate court was unable to determine if a search warrant lacked probable cause since it was not included in the record, the admission of citations, issued by the victim to the defendant, seized during a search of the defendant's home was harmless because they did not contribute to defendant's conviction for first-degree murder; there was ample other evidence of defendant's guilt. *State v. Yager*, — Idaho —, 85 P.3d 656 (2004).

—Independent Search Warrant.

A wholly independent search warrant, procured without reference to information obtained through a warrantless entry that was in violation of the Fourth Amendment, constitutes an independent source for seizure of the evidence sufficient to purge any taint on the evidence from a prior illegal entry and can serve as a basis for denying suppression of evidence obtained by illegal police conduct. *State v. Soto*, 127 Idaho 324, 900 P.2d 800 (Ct. App. 1995).

—In General.

It is not to be understood that every search and seizure made without search warrant is within prohibition of this section. *State v. Anderson*, 31 Idaho 514, 174 P. 124 (1918). But see, *State v. Arregui*, 44 Idaho 43, 254 P. 788, 52 A.L.R. 463 (1927).

Constitution and laws are not solicitous to aid persons charged with crime in their efforts to conceal or sequester evidence of their iniquity. *State v. Myers*, 36 Idaho 396, 211 P. 440 (1922).

Courts uniformly hold that search without warrant, but with owner's consent, is not unreasonable search within meaning of this section. *State v. West*, 42 Idaho 214, 245 P. 85 (1926).

Refusal to permit motion to test validity of warrant and search at trial operates to deny raising of question of violation of constitutional rights. *State v. Arregui*, 44 Idaho 43, 254 P. 788, 52 A.L.R. 463 (1927).

The fact that an insufficient affidavit for a search warrant is made by a federal officer does not save the warrant from successful assailable nor the evidence thereon obtained from exclusion. *State v. Arregui*, 44 Idaho 43, 254 P. 788, 52 A.L.R. 463 (1927).

A search and seizure without warrant made as an incident to a lawful arrest of defendants reasonably suspected of having committed a burglary a few minutes before was not unreasonable. *State v. Loyd*, 92 Idaho 20, 435 P.2d 797 (1967).

An affidavit or recorded testimony, which uses hearsay upon hearsay to establish probable cause, is not acceptable for use by a magistrate in determining whether or not to issue a search warrant unless the facts indicate the reliability of both the initial source

and the affiant's source. *State v. Oropeza*, 97 Idaho 387, 545 P.2d 475 (1976).

Ordinarily, searches without a warrant are unreasonable per se and evidence seized in a warrantless search must be suppressed unless the search falls within certain specific and well-delineated exceptions to the warrant requirement. *State v. Pinson*, 104 Idaho 227, 657 P.2d 1095 (Ct. App. 1983).

The validity of a search warrant should not be tested in a hypertechnical manner. *State v. Fowler*, 106 Idaho 3, 674 P.2d 432 (Ct. App. 1983), overruled on other grounds, *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

Where officers entered defendant's home without either warrant or consent, but with knowledge of outstanding felony warrant from another state, such entry into the defendant's residence was in violation of U.S. Const., Amend. 4 and equally in violation of this section and evidence seized as a result of the entry would be suppressed. *State v. Bradley*, 106 Idaho 358, 679 P.2d 635 (1983), cert. denied, 464 U.S. 1041, 104 S. Ct. 705, 79 L. Ed. 2d 169 (1984).

Idaho peace officer may not lawfully enter into a person's dwelling, without his consent and in the absence of exigent circumstances, for the purpose of making an arrest on the basis of mere knowledge of an outstanding felony warrant from another state. *State v. Bradley*, 106 Idaho 358, 679 P.2d 635 (1983), cert. denied, 464 U.S. 1041, 104 S. Ct. 705, 79 L. Ed. 2d 169 (1984).

One of the established exceptions to the warrant requirement is the search incident to a lawful arrest. *State v. Cook*, 106 Idaho 209, 677 P.2d 522 (Ct. App. 1984).

Warrantless searches are deemed to be "per se unreasonable" and the burden is upon the state to demonstrate that the search was carried out pursuant to one of the exceptions to the warrant requirement. *State v. Cook*, 106 Idaho 209, 677 P.2d 522 (Ct. App. 1984).

The test for reviewing the magistrate's action in issuing a search warrant is whether he abused his discretion in finding that probable cause existed. *State v. Holman*, 109 Idaho 382, 707 P.2d 493 (Ct. App. 1985).

Where the defendant gave the paper bags to his wife and her parents, he had no objectively reasonable expectation of privacy in the bags and it was not improper for the officers to look inside them without a warrant. *State v. Cootz*, 110 Idaho 807, 718 P.2d 1245 (Ct. App. 1986).

Because the search by the police officer at the invitation of the defendant's landlord was unreasonable, and therefore unconstitutional, the evidence gained as a result of the search must be excluded. Thus, the personal observations of the officer, which were used to file an affidavit and obtain a search warrant,

must be deleted from the affidavit. Since the magistrate would not have found probable cause to issue the warrant based on the information which was properly before him, the search conducted pursuant to it was unlawful and all evidence seized as a result of that search must be suppressed. *State v. Johnson*, 110 Idaho 516, 716 P.2d 1288 (1986).

This section of the state constitution in some instances confers broader protection against unreasonable searches and seizures than does the Fourth Amendment of the United States Constitution. *State v. Guzman*, 122 Idaho 981, 842 P.2d 660 (1992).

Affidavits for search warrants should not be reviewed and tested in a hypertechnical manner; rather such affidavits must be tested and interpreted by both the magistrate and reviewing appellate court in a common sense and realistic fashion. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

—Probable Cause.

Where defendant was associated with suspected narcotics suppliers, search warrants for his bank records, power records, residence and businesses were supported by probable cause; a detective identified defendant as a multi-hundred pound marijuana trafficker through a confidential informant who personally purchased from defendant up to 200 hundred pounds of marijuana at a time; the search warrant affidavits did not contain any misrepresentations. *State v. Patterson*, — Idaho —, 87 P.3d 967 (Ct. App. 2003).

Seizure.

When a vehicle is stopped by a police officer and its occupants are detained, a seizure within the fourth amendment of the United States Constitution and this section has occurred, even if the purpose of the stop is limited and the resulting detention is quite brief. *State v. Henderson*, 114 Idaho 293, 756 P.2d 1057 (1988).

By being asked to step out of the car in which he was a passenger and wait in a police officer's car while they conducted search of said car, defendant was not impermissibly detained and therefore was not the victim of an unreasonable seizure. *State v. Ryan*, 117 Idaho 504, 788 P.2d 1327 (1990).

Where no warrant has been issued, the proper analysis for determining whether there has been an illegal seizure is to determine: a. Whether the police conduct in question does, in fact, constitute a seizure, and if it does; b. whether the seizure falls within one of the recognized exceptions to the warrant requirement; and c. once it has been determined that there is a constitutionally prohibited seizure, evidence or information acquired as a result of the seizure will be excluded unless the causal connection between the seizure and the acquisition has been broken. *State v.*

Bainbridge, 117 Idaho 245, 787 P.2d 231 (1990).

A mere show of authority by a police officer which is unheeded by the suspect does not amount to a seizure. *State v. Agundis*, 127 Idaho 587, 903 P.2d 752 (Ct. App. 1995).

In the absence of application of physical force, a person who does not submit to law enforcement authority is not seized, and when defendant fled from officer there was no "seizure" in the common and ordinary sense, and there was no seizure in a constitutional sense. *State v. Agundis*, 127 Idaho 587, 903 P.2d 752 (Ct. App. 1995).

Unreasonable Search.

Where officer approached home only to make general inquiries about nearby residents, he had no more right to ignore the no trespassing sign and closed gate than would a door-to-door solicitor. Therefore, his disregard of the gate and sign amounted to an unreasonable search in violation of this section and evidence of marijuana discovered in subsequent search of hot hut must be suppressed. *State v. Christensen*, 131 Idaho 143, 953 P.2d 583 (1998).

Unwanted Entry.

Idaho citizens, especially those in rural areas, should not have to convert the areas around their homes into the modern equivalent of a medieval fortress in order to prevent uninvited entry by the public, including police officers. *State v. Christensen*, 131 Idaho 143, 953 P.2d 583 (1998).

Utility Power Consumption Records.

The scope of protection afforded by this section does not extend to the individual power consumption records maintained by a utility. Any expectation of privacy in those records is not objectively reasonable. If, as a matter of policy, a utility chooses to voluntarily disclose such information to a law enforcement officer without a subpoena issued under either § 37-2741A or I.C.R. 17(b), that disclosure is lawful, and there is neither any statutory nor constitutional basis for suppression of evidence so obtained. *State v. Kluss*, 125 Idaho 14, 867 P.2d 247 (Ct. App. 1993).

Scope of protection afforded by the Fourth Amendment of the United States Constitution and Idaho Const. Art. 1, § 17 does not extend to power consumption records; as such, neither a warrant nor even a subpoena is required for a utility company to disclose such information. *State v. Patterson*, — Idaho —, 87 P.3d 967 (Ct. App. 2003).

Violation of Defendant's Rights.

A court may not exclude evidence under this section unless it finds that an unlawful search or seizure violated the defendant's own constitutional rights. *State v. Brown*, 113

Idaho 480, 745 P.2d 1101 (Ct. App. 1987).

The defendant's rights under this section are violated only when the challenged conduct invaded his or her own legitimate expectation of privacy rather than that of a third party. *State v. Brown*, 113 Idaho 480, 745 P.2d 1101 (Ct. App. 1987), cert. denied, 116 Idaho 467, 776 P.2d 829 (1988).

The Fourth Amendment of the United States Constitution and this section do not apply to all searches and seizures; the scope of protection is determined by the privacy interests at stake. *State v. Brown*, 113 Idaho 480, 745 P.2d 1101 (Ct. App. 1987), cert. denied, 116 Idaho 467, 776 P.2d 829 (1988).

Waiver as Condition of Parole.

Because defendant made an express, valid waiver as a condition of his parole of his constitutional rights to be free from warrantless searches and seizures, defendant was deemed to have consented to subsequent search of his residence. *State v. Peters*, 130 Idaho 960, 950 P.2d 1299 (Ct. App. 1997).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 371; Vol. II, p. 1634.

68 Am. Jur. 2d, Searches and Seizures, §§ 41-45, 67-70, 74-82.

79 C.J.S., Searches and Seizures, §§ 5, 8-24.

Blood grouping tests as violation of privilege against unreasonable search and seizure. 46 A.L.R. 1016.

Propriety and legality of issuing only one search warrant to search more than one place or premises occupied by same person. 31 A.L.R.2d 864.

Authority to consent for another to search or seizure. 31 A.L.R.2d 1078.

Premises temporarily unoccupied as dwelling within provision forbidding unreasonable search of dwellings. 33 A.L.R.2d 1430.

Sufficiency of description of automobile or other conveyance to be searched. 47 A.L.R.2d 1444.

Sufficiency of description in warrant of person to be searched. 43 A.L.R.5th 1.

Modern status of rule governing admissibility of evidence obtained by unlawful search and seizure. 50 A.L.R.2d 531; 43 A.L.R.3d 385.

Interest in, or connection with, premises searched as affecting standing to attack legality of search. 78 A.L.R.2d 246.

Transiently occupied room in hotel, motel, or rooming-house as within provision forbidding unreasonable searches and seizures. 86 A.L.R.2d 984.

Lawfulness of nonconsensual search and seizure without warrant, prior to arrest. 89 A.L.R.2d 715.

Sufficiency of showing as to time of occur-

rence of facts relied upon. 100 A.L.R.2d 525.

Admissibility, in civil case, of evidence obtained by unlawful search and seizure. 5 A.L.R.3d 670.

Validity of consent to search given by one in custody of officers. 9 A.L.R.3d 858.

Propriety of considering hearsay or other incompetent evidence in establishing probable cause for issuance of search warrant. 10 A.L.R.3d 359.

Sufficiency of description, in search warrant, of apartment or room to be searched in multiple-occupancy structure. 11 A.L.R.3d 1330.

Modern status of rule as to validity of nonconsensual search and seizure made without warrant after lawful arrest as affected by lapse of time between, or difference in places of, arrest and search. 19 A.L.R.3d 727.

Plea of guilty as waiver of claim of unlawful search and seizure. 20 A.L.R.3d 724.

Propriety of execution of search warrant at nighttime. 41 A.L.R.5th 171.

Admissibility, in criminal case, of evidence obtained by search by private individual. 36 A.L.R.3d 553.

Comment note on "Fruit of the poisonous tree" doctrine excluding evidence derived from information gained in illegal search. 43 A.L.R.3d 385.

"Furtive" movement or gesture as justifying police search. 45 A.L.R.3d 581.

Observation through binoculars as constituting unreasonable search. 48 A.L.R.3d 1178.

Admissibility, in criminal prosecution, of evidence obtained by electronic surveillance of prisoner. 57 A.L.R.3d 172.

Admissibility, in state probation revocation proceedings, of evidence obtained through illegal search and seizure. 77 A.L.R.3d 636.

Validity of requirement that, as condition of probation, defendant submit to warrantless searches. 79 A.L.R.3d 1083.

Disputation of truth of matters stated in affidavit in support of search warrant. 24 A.L.R.4th 1266.

Admissibility in criminal case of evidence that accused refused to take test of intoxication. 26 A.L.R.4th 1112.

Propriety of state or local government health officer's warrantless search. 53 A.L.R.4th 1168.

Seizure of books, documents, or other papers under search warrant not describing such items. 54 A.L.R.4th 391.

Search conducted by school official or teacher as violation of Fourth Amendment or equivalent state constitutional provision. 31 A.L.R.5th 229.

Effect of retroactive consent on legality of otherwise unlawful search and seizure. 76 A.L.R.5th 563.

Permissibility and sufficiency of warrant-

less use of thermal imager or Forward Looking Infra-Red Radar (F.L.I.R.). 78 A.L.R.5th 309.

Validity of search or seizure of computer, computer disk, or computer peripheral equipment. 84 A.L.R.5th 1.

What constitutes compliance with knock-and-announce rule in search of private premises — state cases. 85 A.L.R.5th 1.

Federal and state constitutions as protecting prison visitor against unreasonable searches and seizures. 85 A.L.R.5th 261.

Constitutionality of secret video surveillance. 91 A.L.R.5th 585.

Expectation of privacy in internet communications. 92 A.L.R.5th 15.

Error, in either search warrant or application for warrant, as to address of place to be searched as rendering warrant invalid. 103 A.L.R.5th 463.

Search warrant as authorizing search of structures on property other than main house or other building, or location other than designated portion of building. 104 A.L.R.5th 165.

Admissibility, in civil proceeding, of evidence obtained through unlawful search and seizure. 105 A.L.R.5th 1.

Odor detectable by unaided person as furnishing probable cause for search warrant. 106 A.L.R.5th 397.

Admissibility of evidence discovered in search of defendant's property or residence authorized by defendant's adult relative other than spouse. 160 A.L.R. Fed. 165.

Sufficiency of information provided by anonymous informant to provide probable cause for Federal search warrant — cases decided after *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). 178 A.L.R. Fed. 487.

Validity of warrantless administrative inspection of business that is allegedly closely or pervasively regulated; cases decided since *Colonnade Catering Corp. v. U.S.*, 397 U.S. 72, 90 S. Ct. 774, 25 L. Ed. 2d 60 (1970). 182 A.L.R. Fed. 467.

§ 18. Justice to be freely and speedily administered. — Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and right and justice shall be administered without sale, denial, delay, or prejudice.

Comp. provisions: Mont. Art. 2, § 16.

Cited in: In re Sharp, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908); State v. Whisler, 32 Idaho 520, 185 P. 845 (1919); State Water Conservation Bd. v. Enking, 56 Idaho 722, 58 P.2d 779 (1936); State v. Sprouse, 63 Idaho 166, 118 P.2d 378 (1941); Lorang v. Hays, 69 Idaho 440, 209 P.2d 733 (1949); State v. Linebarger, 71 Idaho 255, 232 P.2d 669 (1951); Billings v. Sisters of Mercy, 86 Idaho 485, 389 P.2d 224 (1964); State v. Haggard, 89 Idaho 217, 404 P.2d 580 (1965); Boyer v. Shoshone-Bannock Indian Tribes, 92 Idaho 257, 441 P.2d 167 (1968); State v. Bitz, 93 Idaho 239, 460 P.2d 374 (1969); Lundbeck v. State, Dep't of Hwys., 95 Idaho 549, 511 P.2d 1325 (1973); Pittam v. Maynard, 103 Idaho 177, 646 P.2d 419 (1982); State v. Russell, 103 Idaho 699, 652 P.2d 203 (1982); Johnson v. Sunshine Mining Co., 106 Idaho 866, 684 P.2d 268 (1984); Sterling v. Bloom, 111 Idaho 211, 723 P.2d 755 (1986); White v. Unigard Mut. Ins. Co., 112 Idaho 94, 730 P.2d 1014 (1986); State v. Chilton, 112 Idaho 823, 736 P.2d 1277 (1987); State v. Blume, 113 Idaho 224, 743 P.2d 92 (Ct. App. 1987); Cady v. Allstate Ins. Co., 113 Idaho 667, 747 P.2d 76 (Ct. App. 1987); Adams v. Armstrong World Indus., Inc., 847 F.2d 589 (9th Cir. 1988); State v. Paz, 118 Idaho 542, 798 P.2d 1 (1990); State v. Mathews, 129 Idaho 865, 934 P.2d 931 (1997);

Inama v. Brewer, 132 Idaho 377, 973 P.2d 148 (1999); Struhs v. Protection Technologies, Inc., 133 Idaho 715, 992 P.2d 164 (1999).

ANALYSIS

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Allowance of Attorney's Fees.

This provision is not violated by that part of mechanics' lien law of 1899 which authorized recovery of reasonable attorney's fees. *Thompson v. Wise Boy Mining & Milling Co.*, 9 Idaho 363, 74 P. 958 (1903).

Clerk's Fee.

The fee charged to an appellant for preparation of the clerk's record on appeal did not violate this section; where she did not assert that the fee set by I.A.R. 27(b), \$1.25 for each page of the record, was an unreasonable amount, and she made no showing that she should be relieved from the payment of the fee for the clerk's record on grounds of indigency. *Rodell v. Nelson*, 113 Idaho 945, 750 P.2d 966 (Ct. App. 1988).

Common Law Actions.

Nothing in this section either explicitly or implicitly prohibits legislative modification of common-law actions; therefore, that portion of the hospital-medical liability act (now repealed) which placed a limitation on damages recoverable in medical malpractice actions was not unconstitutional for denying a remedy which existed at common law without providing substitute procedures or remedies in lieu thereof. *Jones v. State Bd. of Medicine*, 97 Idaho 859, 555 P.2d 399 (1976), cert. denied, 431 U.S. 914, 97 S. Ct. 2173, 53 L. Ed. 2d 223 (1977).

The legislature is not prohibited from abolishing common-law rights of action without providing substitutes therefor. *Twin Falls Clinic & Hosp. Bldg. Corp. v. Hamill*, 103 Idaho 19, 644 P.2d 341 (1982).

Construction.

This section does not guaranty a remedy to every person for every injury. *DeMoss v. City of Coeur D'Alene*, 118 Idaho 176, 795 P.2d 875 (1990).

Defendant's contention that he was deprived of his constitutional right of access to the courts because he was prevented from pursuing a post-conviction relief action due to his incarceration in a foreign prison which did not offer a law library with access to Idaho law books was foreclosed due to the fact that defendant was represented by a private Idaho counsel who had the opportunity to file an application for post-conviction relief on defendant's behalf within the period of limitation. Since defendant did not file his post-conviction relief application within one year of gaining the ability to access the Idaho court's through his privately retained Idaho counsel, his application was barred by the limitation period of § 19-4902. *Martinez v. State*, 130 Idaho 530, 944 P.2d 127 (Ct. App. 1997).

Court Access.

Defendant's suggestion that because she was incarcerated in an institution which did

not have a law library or law-trained inmates as clerks, who could have advised her about the amendment to period of limitation for § 19-4902, her right to access to the courts was impaired, was without merit, as defendant presented no evidence in the district court to prove allegations or raise a factual issue regarding her claim. *Reyes v. State*, 128 Idaho 413, 913 P.2d 1183 (Ct. App. 1996).

Any prisoner who voluntarily, knowingly, and intelligently waives his or her right to counsel in a criminal proceeding is not entitled under the constitution to alternative means of access to the courts, including access to a law library or other legal material, because prisoners may not dictate to the state the method by which access to the courts will be assured *State v. Brandt*, 135 Idaho 205, 16 P.3d 302 (Ct. App. 2000).

Ex Post Facto Laws.

The amendment to this section shortening the time period allowed for filing an application for post conviction relief did not constitute an ex post facto change where the applicant was afforded the full time allowed by the amendment to file: Such a situation would be clearly contrary to the terms established by the legislature in this section. *Reyes v. State*, 128 Idaho 413, 913 P.2d 1183 (Ct. App. 1996).

Fair and Impartial Trial.

Defendant is prejudiced in his trial only where he has been deprived of some constitutional right or where convicted upon consideration of incompetent evidence or upon evidence not tending to prove guilt. *State v. Ramirez*, 33 Idaho 803, 199 P. 376 (1921).

It is public policy of state disclosed by constitutional guaranties, as well as by numerous statutory provisions, to accord to every person accused of crime, not only fair and impartial trial, but every reasonable opportunity to prepare his defense and vindicate his innocence. *State v. Montroy*, 37 Idaho 684, 217 P. 611 (1923).

Session Laws 1925, chs. 89, 90, pp. 124, 128 (see § 3-415), amending S.L. 1923, ch. 211, p. 343, are not violative of Constitution in failing to provide proper hearing before impartial tribunal. In re *Edwards*, 45 Idaho 676, 266 P. 665 (1928).

This provision of the constitution applies to the guilty as well as the innocent; it means that whoever he may be, justice shall be administered to him without prejudice. The section is clearly violated by allowing evidence of other offenses of a different character and that witnesses for accused were guilty of offenses not associated with the crime for which accused was being tried. *State v. Machen*, 56 Idaho 775, 58 P.2d 1246 (1936).

Existing law is not changed by the declaration in the bill of rights that the courts shall afford a remedy for every injury to property,

character or person, nor are the courts empowered to amend, repeal or modify laws to meet their ideas of what is natural justice. *Moon v. Bullock*, 65 Idaho 594, 151 P.2d 765 (1944), overruled on other grounds, *Doggett v. Boiler Eng'r & Supply Co.*, 93 Idaho 890, 477 P.2d 511 (1970).

The public object sought to be accomplished by § 6-610 is within the police power and such limitation upon the rights of plaintiffs having causes of action against police officers is reasonable, that of securing an undertaking for costs. The act has a direct tendency to accomplish the legislative purpose and is not unconstitutional upon any ground urged. *Pigg v. Brockman*, 79 Idaho 233, 314 P.2d 609 (1957).

Governmental Tort Liability.

Although the court abrogated the common-law doctrine of governmental tort immunity, the legislature had the constitutional authority to reimpose governmental tort immunity. *Haeg v. City of Pocatello*, 98 Idaho 315, 563 P.2d 39 (1977).

Insanity Plea.

Under former statute requiring automatic commitment of defendant acquitted on ground of mental disease or defect, an accused who asserted the defense of mental disease or defect, and was acquitted on that basis, could be automatically committed to a mental institution without further hearing and such automatic commitment did not violate the acquittee's rights to due process or equal protection because his dangerous mental condition was established by his own admission. The committed acquittee thereafter bore the burden of establishing his right to release by showing, pursuant to authorized procedures, that he was no longer dangerously insane. *Penny v. State, Dep't of Health & Welfare*, 103 Idaho 689, 652 P.2d 193 (1982).

An accused who successfully asserted the defense of mental disease or defect and was automatically committed to mental institution was not denied his right to a hearing and judicial determination on the question of his mental condition in that those rights were accorded him at the time his defense of mental disease or defect was tendered and accepted. The fact that two separate statutes governed the recognition of those right, i.e., former statute requiring automatic commitment of defendant acquitted on ground of mental disease or defect and § 66-329 governing involuntary civil commitments did not deny equal protection, but rather simply reflected differing factual settings under which those rights were equally recognized. *Penny v. State, Dep't of Health & Welfare*, 103 Idaho 689, 652 P.2d 193 (1982).

Judicial Powers.

The legislature can not authorize a public officer to litigate private rights. *Bear Lake*

County v. Budge, 9 Idaho 703, 75 P. 614, 108 Am. St. R. 179 (1904).

It is sought by section 24 of the state sales tax act (S.L. 1935 [1st E.S.], ch. 12, partially invalid and now repealed) to close the doors of justice and to deny to persons deprived of their property without due process of law, a speedy remedy for the wrong thereby inflicted on them. This section of the act attempts to deprive the judiciary of its rightful power and jurisdiction. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

Limitation of Action.

Section 72-407 (repealed, now see § 72-706), Idaho Code, which provided that claims for workmen's compensation for injuries arising more than four years after an accident were barred, did not violate this section of the Constitution. *Cummings v. J.R. Simplot Co.*, 95 Idaho 465, 511 P.2d 282 (1973).

Subdivision 4 of § 5-219 providing for limitation on action for professional malpractice does not violate this section despite the fact that it eliminates certain classes of plaintiffs. *Adams v. Armstrong World Indus., Inc.*, 664 F. Supp. 463 (D. Idaho 1987), rev'd on other grounds, 847 F.2d 589 (9th Cir. 1988).

Magnitude of Injury Immaterial.

Proof that the reservoir constructed by upstream owner was small and of limited capacity and would not substantially impede or diminish the flow of water available to plaintiffs would not preclude issuance of injunction since the law will not countenance invasion of a right merely because it is small. *Ward v. Kidd*, 87 Idaho 216, 392 P.2d 183 (1964).

Misconduct of Prosecutors.

Every person charged with crime is entitled to fair and impartial trial and when prosecuting officers undertake to prejudice defendant's case, new trial will be granted. *State v. Clark*, 27 Idaho 48, 146 P. 1107 (1915).

Modification of Judgment.

Upon this section court based right of convicted defendant to have remittitur recalled by appellate court and judgment modified. *State v. Ramirez*, 34 Idaho 623, 203 P. 279, 29 A.L.R. 297 (1921).

Notice.

The requirements of due process were satisfied because in 1990 defendant was only required by statute to be given notice of the then-current possible penalties for further convictions and it was immaterial that the law changed in 1992. *Wilson v. State*, 133 Idaho 814, 993 P.2d 1205 (Ct. App. 2000).

Open Court Clause.

The legislature must be given the sound discretion to amend the law as society's needs require, and to adopt an inflexible rule pro-

hibiting the legislature from doing so would deny the need for an everchanging analysis of society's needs; accordingly, a strict interpretation of the open court clause of this section does not prohibit the legislature's ability to enact new laws and repeal old laws as the need arises. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990).

Person.

A corporation is a person with the ordinary rights of a person, therefore, the county hospital was not barred from suing in the small claims department because it is not a natural person. *Bissett v. Unnamed Members of Political Compact*, 111 Idaho 863, 727 P.2d 1291 (Ct. App. 1986).

Prejudice of Judge.

Prejudice of trial judge against one of parties to cause is ground for change of venue in view of provisions of this section, although statutes do not enumerate that cause as one of grounds for change of venue. *Day v. Day*, 12 Idaho 556, 86 P. 531 (1906).

Prejudice of judge contemplated by this section is prejudice that is directed against party litigant, and is of such nature and character as would render it improbable that presiding judge could or would give litigant fair and impartial trial in particular case pending. *Bell v. Bell*, 18 Idaho 636, 111 P. 1074 (1910).

Words "bias" and "prejudice" refer to mental attitude or disposition of judge toward party to litigation and not to any view that he may entertain in regard to subject-matter of action. *State v. Waterman*, 36 Idaho 259, 210 P. 208 (1922).

This provision exists in addition to statute disqualifying judge who is party to or interested in pending action. *Poff v. Scales*, 36 Idaho 762, 213 P. 1019 (1923).

This section protects a litigant who has disqualified one judge because of bias and prejudice from being required to go to trial before another judge who is actually biased and prejudiced against him. *Home Owners Loan Corp. v. Stookey*, 59 Idaho 267, 81 P.2d 1096 (1938).

The fact a party has disqualified one judge, does not require him to go to trial before another judge who is in fact prejudiced, but in such case he must show the facts of prejudice; a conclusion in the language of the statute will not suffice. *Home Owners Loan Corp. v. Stookey*, 59 Idaho 267, 81 P.2d 1096 (1938).

The purpose of this section and statutes pursuant thereto, authorizing a change of judges upon filing an affidavit charging bias or prejudice, was to enable a litigant to have a change of judges on account of prejudice or believed prejudice of judge without having to give his reasons therefor. *Davis v. Erwin*, 65 Idaho 77, 139 P.2d 474 (1943); *Anderson v.*

Winstead, 65 Idaho 161, 140 P.2d 233 (1945).

Purpose.

This section merely admonishes the courts to dispense justice and to secure citizens the rights and remedies afforded by the legislature or by the common law, and this section does not create any substantive rights. *Hawley v. Green*, 117 Idaho 498, 788 P.2d 1321 (1990).

Rate-Fixing Commissions.

Public utilities commission is arm of legislature and not court of justice within meaning of this section. *Natatorium Co. v. Erb*, 34 Idaho 209, 200 P. 348 (1921).

Method of public utilities commission in charging rates for transportation that is arbitrary and unreasonable and excludes evidence by carrier of confiscatory character of rates proposed will be set aside. *Chicago, M. & St. P. Ry. v. Public Utils. Comm'n*, 274 U.S. 344, 47 S. Ct. 604, 71 L. Ed. 1085 (1927).

Right to Counsel.

It is not unconstitutional for plaintiff and defendant to be denied counsel in the small claims court (§ 1-1508, repealed), because a plaintiff, by knowingly commencing his action therein cannot thereafter object to denial of counsel, and a defendant may avail himself of the right (under § 1-1511, repealed) to appeal to the district court and a trial de novo with assistance of counsel. *Foster v. Walus*, 81 Idaho 452, 347 P.2d 120 (1959).

Self-Executing.

This section has been held to be self-acting and self-executing, and requires no legislative provisions for its enforcement; neither can it be abridged or modified by any legislative or judicial act. *State v. Waterman*, 36 Idaho 259, 210 P. 208 (1922); *State v. Montroy*, 37 Idaho 684, 217 P. 611 (1923).

Speedy Trial.

Speedy trial, under this section, means a trial as soon as is reasonably possible. *Ex parte Rash*, 64 Idaho 521, 134 P.2d 420 (1943).

An accused, though not entitled to a discharge on a writ of habeas corpus for failure to bring him to trial at the next term following his being informed against, is entitled to be tried, notwithstanding the difficulty of obtaining witnesses and jurors owing to the war, and the Supreme Court will so direct on disposing of the application for a writ of habeas corpus. *Ex parte Rash*, 64 Idaho 521, 134 P.2d 420 (1943).

Right of defendant to move for dismissal on ground that case had not been brought up for trial in term following finding of indictment was waived, when motion was not submitted until after jury was sworn. *State v. Shaw*, 69 Idaho 365, 207 P.2d 540 (1949).

Defendant was not entitled to have infor-

mation dismissed under § 19-3501 on the grounds that the trial court had failed to grant him a speedy trial where a new information had been filed in the term succeeding the term in which the complaint was filed, such new information requiring a new arraignment and plea and the defendant was not tried until the second following term. *State v. Davidson*, 78 Idaho 553, 309 P.2d 211 (1957).

Where complaint for issuing fraudulent checks was filed March 6, 1964, a hold order was sent to the state penitentiary, where defendant had been returned for violation of probation, on July 24, 1964, defendant requested a speedy trial on September 29, 1964, and December 18, 1964, he was delivered to the county sheriff and arrested February 24, 1965, a preliminary hearing was held March 4, 1965, and defendant petitioned for a writ of habeas corpus on May 4, 1965, defendant was not accorded a speedy trial within the guarantees of this section. *Jacobson v. Winter*, 91 Idaho 11, 415 P.2d 297 (1966).

Information that an inmate is a suspect in another, as yet uncharged, crime is relevant to the parole decision and a rule that a denial of parole following the commission's receipt of such information will constitute an "arrest" for the uncharged offense would hamper the functions of both the commission and law enforcement authorities as such; therefore, the denial of parole to defendant was not the equivalent of an arrest for the sexual offense that remained under investigation, his continued incarceration was for the burglary conviction and it was not pretrial detention for the uncharged sex offense, and defendant's sixth amendment rights were not implicated until formal charges were filed. *State v. Brashier*, 127 Idaho 730, 905 P.2d 1039 (Ct. App. 1995).

Unlike the statutory speedy trial guarantee, which measures timeliness from the date

of filing the information or indictment, the constitutional guarantees apply from the date when either formal charges are filed or the defendant is arrested, whichever occurs first. *State v. Hernandez*, 133 Idaho 576, 990 P.2d 742 (Ct. App. 1999).

The district court did not err in finding no constitutional violation of the defendant's right to a speedy trial where, although the fact that he was incarcerated throughout the nine month pretrial period was problematical, it did not by itself establish such prejudice from the state-engendered delay that dismissal was compelled, since there was no prejudice to the presentation of the defense and the delay attributable to the state was not extremely egregious. *State v. Hernandez*, 133 Idaho 576, 990 P.2d 742 (Ct. App. 1999).

Taxpayers as Ratemakers.

Fact that a statute providing for appointment of commission for purpose of fixing rates to be charged water consumers required that such commissioners shall be "taxpayers of the city" did render statute obnoxious to either state or federal constitution on ground that it did not provide an impartial and unprejudiced tribunal. *City of Pocatello v. Murray*, 21 Idaho 180, 120 P. 812, aff'd, 226 U.S. 318, 33 S. Ct. 107, 57 L. Ed. 239 (1912).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 372; Vol. II, pp. 1634, 1637.

16A Am. Jur. 2d, Constitutional Law, §§ 613, 614.

16D C.J.S. Constitutional Law, §§ 1428-1437.

Laws governing judicial recusal or disqualification in state proceeding as violating federal or state constitution. 91 A.L.R.5th 437.

Examination and challenge of state case jurors on basis of attitudes toward homosexuality. 80 A.L.R.5th 469.

§ 19. Right of suffrage guaranteed. — No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage.

Comp. provisions: Mont. Art. 2, § 13.

Utah. Art. 1, § 17.

Wyo. Art. 1, § 27.

ANALYSIS

Construed.

Reapportionment.

Term limits pledge.

Construed.

This section has reference to attendance of officers, civil or military, at polls, and prohibits them from interfering with free and lawful exercise of right of suffrage. *Adams v.*

Lansdon, 18 Idaho 483, 110 P. 280 (1910).

The right of citizens to organize, and give expression and effect to their political aspirations through political parties is inherent in and a part of the right of suffrage and an act that has the effect of preventing the formation of new political parties is unconstitutional. *American Indep. Party in Idaho, Inc. v. Cenarrusa*, 92 Idaho 356, 442 P.2d 766 (1968).

Reapportionment.

The reapportionment scheme of chapter 173 of 1984 (now repealed) which contained population deviations of up to 33 percent

supposedly justified by Idaho's terrain, its shape, and its relatively sparse population, violated the Idaho constitutional guarantees of equal protection and the right of suffrage, especially since the record established that there were no less than ten alternative plans with population deviations of less than ten percent which served the same State policies as those advanced in justification of the 33 percent deviation. *Hellar v. Cenarrusa*, 106 Idaho 586, 682 P.2d 539 (1984).

Term Limits Pledge.

The ballot legend in § 34-907B is unconsti-

tutional under the Idaho Constitution because it infringes on the fundamental right to vote, and the State did not demonstrate such an infringement was necessary to promote a compelling state interest. *Van Valkenburgh v. Citizens For Term Limits*, 135 Idaho 121, 15 P.3d 1129 (2000).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 373; Vol. II, p. 1635.

25 Am. Jur. 2d, Elections, §§ 53-54.

29 C.J.S., Elections, §§ 2, 6.

§ 20. No property qualification required of electors — Exceptions. — No property qualifications shall ever be required for any person to vote or hold office except in school elections, or elections creating indebtedness, or in irrigation district elections, as to which last-named elections the legislature may restrict the voters to land owners.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 20. No property qualification required of electors. — No property qualification shall ever be required for any person to vote or hold office except in school elections or elections creating indebtedness."

It was amended, as proposed by S.L. 1931, page 462, H.J.R. No. 2, and ratified at the general election in November 1932, to read as it now appears.

Comp. provisions: Utah. Art. 4, § 7.

Cited in: *Johnson v. Lewiston Orchards Irrigation Dist.*, 99 Idaho 501, 584 P.2d 646 (1978).

ANALYSIS

Drainage district elections.

Irrigation districts (decision prior to amendment).

Municipal bond elections.

School elections.

Water and sewer districts.

Drainage District Elections.

Act making ownership of real estate within limits of drainage district the only qualification for voters is in violation of constitution. *Ferbrache v. Drainage Dist. No. 5*, 23 Idaho 85, 128 P. 553, 44 L.R.A. (n.s.) 538, 1915C Ann. Cas. 43 (1912).

Irrigation Districts (Decision Prior to Amendment).

Act fixing property qualification for voters at irrigation district elections other than elections creating indebtedness is in violation of this section. *Pioneer Irrigation Dist. v. Walker*, 20 Idaho 605, 119 P. 304 (1911); *Bissett v. Pioneer Irrigation Dist.*, 21 Idaho 98, 120 P. 461 (1912).

Municipal Bond Elections.

This section authorizes imposition, in municipal charter, of property qualification on right to vote on proposition for incurrence of indebtedness. *Wiggin v. City of Lewiston*, 8 Idaho 527, 69 P. 286 (1902).

School Elections.

The power of the legislature to prescribe additional qualifications for electors under Art. VI, § 4 is modified by this section as to electors in school elections and elections creating indebtedness. *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938).

In view of the pronouncement of the United States Supreme Court in *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 90 S. Ct. 1990, 26 L. Ed. 2d 523 (1970), property qualifications are now invalid insofar as the franchise to vote in general obligation bond elections are covered; however, such opinion did not affect previous decision of Idaho Supreme Court in *Muench v. Paine*, 93 Idaho 473, 463 P.2d 939 (1970), holding that property qualifications were constitutional in school bond elections, and did not affect the validity of school bonds previously issued. *Muench v. Paine*, 94 Idaho 12, 480 P.2d 196 (1971).

Water and Sewer Districts.

The provision of § 42-3207 requiring residents and qualified electors to be taxpayers before voting at an organizational election was an unconstitutional requirement inasmuch as no qualifications are ever to be required for any person to vote or hold office except in school elections or in irrigation district elections. *Clemens v. Pinehurst Water Dist.*, 81 Idaho 213, 339 P.2d 665 (1959).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 375; Vol. II, p. 1635.

25 Am. Jur. 2d, Elections, § 79.
29 C.J.S., Elections, § 28.

§ 21. Reserved rights not impaired. — This enumeration of rights shall not be construed to impair or deny other rights retained by the people.

Comp. provisions: Cal. Art. 1, § 24.

Mont. Art. 2, § 34.

Utah. Art. 1, § 25.

Wash. Art. 1, § 30.

Wyo. Art. 1, § 36.

Cited in: Continental Life Ins. & Inv. Co. v. Hattabaugh, 21 Idaho 285, 121 P. 81 (1912); State Water Conservation Bd. v. Enking, 56 Idaho 722, 58 P.2d 779 (1936); State v. Kouni, 58 Idaho 493, 76 P.2d 917 (1938); In re Kaufman, 69 Idaho 297, 206 P.2d 528 (1949).

ANALYSIS

Education of children.

Monopolies and trusts.

Personal appearance.

Power of legislature.

Education of Children.

It must be conceded that under the Idaho Constitution parents have a right to participate in the supervision and control of the education of their children and while the Constitution vests the legislature with plenary power as well as a specific mandate to provide for the education of the children of the state and the board of education with general supervision of the public school system, it cannot be seriously urged that in clothing the legislature and the board with such powers the people transfer to them the rights accorded to parenthood before the Constitution was adopted. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

Monopolies and Trusts.

One of these rights retained by people is that legislature shall not enact laws for conduct of business of state in making purchases for counties of state that will create a monopoly or trust and require people to pay much more for county printing and supplies than they would otherwise have to pay and thus oppress taxpayer. In re *Gemmell*, 20 Idaho 732, 119 P. 298, 41 L.R.A. (n.s.) 711, 1913A Ann. Cas. 76 (1911).

Personal Appearance.

The right to wear one's hair in a manner of his choice is a protected right of personal taste not to be interfered with by the state unless the state can meet the burden of showing a substantial health, safety, academic or disciplinary problem created by the wearing of long hair. *Murphy v. Pocatello School Dist.* No. 25, 94 Idaho 32, 480 P.2d 878 (1971).

Power of Legislature.

The Constitution is an instrument of limitation and not of grant and the legislature has plenary power in all matters of legislation except where prohibited by the Constitution. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959); *Smylie v. Williams*, 81 Idaho 335, 341 P.2d 451 (1959).

Where an office is of legislative creation, the legislature can modify, control or abolish it, and within these powers is embraced the right to change the mode of appointment to the office. *Smylie v. Williams*, 81 Idaho 335, 341 P.2d 451 (1959).

Inasmuch as the Idaho Constitution is a limitation and not a grant of power, the legislature could not contravene express limitations in the Constitution against the payment with state funds of the costs incurred by utilities in relocating their facilities, even when highway improvements made the relocation imperative. *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959).

Statute providing for discontinuance of attendance unit by trustees of reorganized school districts does not violate Const., Art. 1, § 21 by depriving the people of the state of home rule of public schools for it provides safeguards such as notice and election upon proper petition. *Cameron v. Lakeland Class A Sch. Dist.* No. 272, 82 Idaho 375, 353 P.2d 652 (1960).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 392; Vol. II, p. 1636.

§ 22. Rights of crime victims. — A crime victim, as defined by statute, has the following rights:

(1) To be treated with fairness, respect, dignity and privacy throughout the criminal justice process.

(2) To timely disposition of the case.

(3) To prior notification of trial court, appellate and parole proceedings and, upon request, to information about the sentence, incarceration and release of the defendant.

(4) To be present at all criminal justice proceedings.

(5) To communicate with the prosecution.

(6) To be heard, upon request, at all criminal justice proceedings considering a plea of guilty, sentencing, incarceration or release of the defendant, unless manifest injustice would result.

(7) To restitution, as provided by law, from the person committing the offense that caused the victim's loss.

(8) To refuse an interview, ex parte contact, or other request by the defendant, or any other person acting on behalf of the defendant, unless such request is authorized by law.

(9) To read presentence reports relating to the crime.

(10) To the same rights in juvenile proceedings, where the offense is a felony if committed by an adult, as guaranteed in this section, provided that access to the social history report shall be determined by statute.

Nothing in this section shall be construed to authorize a court to dismiss a case, to set aside or void a finding of guilt or an acceptance of a plea of guilty, or to obtain appellate, habeas corpus, or other relief from any criminal judgment, for a violation of the provisions of this section; nor be construed as creating a cause of action for money damages, costs or attorney fees against the state, a county, a municipality, any agency, instrumentality or person; nor be construed as limiting any rights for victims previously conferred by statute. This section shall be self-enacting. The legislature shall have the power to enact laws to define, implement, preserve, and expand the rights guaranteed to victims in the provisions of this section.

Compiler's notes. This section was added to Article I as proposed by H.J.R. No. 16 (S.L. 1994, p. 1498) and ratified at the general election on November 8, 1994.

ANALYSIS

Refusal to meet defendant.
Right to address court.

Refusal to Meet Defendant.

I.R.C.R. 16(b)(6) does not entitle a defendant or his agent contact with victims or witnesses of an alleged crime; in fact, such victims and witnesses may constitutionally

refuse such an interview unless otherwise required by law. *LaBelle v. State*, 130 Idaho 115, 937 P.2d 427 (Ct. App. 1997).

Right to Address Court.

The right of a crime victim to address the court at the offender's sentencing hearing is guaranteed by both Idaho's constitution and statutory law. *State v. Guerrero*, 130 Idaho 311, 940 P.2d 419 (Ct. App. 1997).

Collateral References. Validity, construction, and application of state constitutional or statutory victims' bill of rights. 91 A.L.R.5th 343.

Article II

DISTRIBUTION OF POWERS

SECTION.

1. Departments of government.

§ 1. Departments of government. — The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Cross ref. Classification of public officers, § 67-301.

Comp. provisions: Cal. Art. 3, § 3.

Mont. Art. 3, § 1.

Ore. Art. 3, § 1.

Utah. Art. 5, § 1.

Wyo. Art. 2, § 1.

Sec. to sec. ref. This section is referred to in § 67-3501A.

Cited in: In re Huston, 27 Idaho 231, 147 P. 1064 (1915); Brady v. Place, 41 Idaho 747, 242 P. 314, 243 P. 654 (1925); State ex rel. McKelvey v. Barnes, 55 Idaho 578, 45 P.2d 293 (1935); State v. Van Vlack, 58 Idaho 248, 71 P.2d 1076 (1937); Arneson v. Robinson, 59 Idaho 223, 82 P.2d 249 (1938); Taylor v. State, 62 Idaho 212, 109 P.2d 879 (1941); Moon v. Bullock, 65 Idaho 594, 151 P.2d 765 (1944); Williams v. Koelsch, 67 Idaho 341, 180 P.2d 237 (1947); In re Intermountain Gas Co., 77 Idaho 188, 289 P.2d 933 (1955), cert. dismissed, 352 U.S. 801, 77 S. Ct. 20, 1 L. Ed. 2d 37 (1956); Foster v. Walus, 81 Idaho 452, 347 P.2d 120 (1959); Padgett v. Williams, 82 Idaho 114, 350 P.2d 353 (1960); Caesar v. Williams, 84 Idaho 254, 371 P.2d 241 (1962); R.E.W. Constr. Co. v. District Court, 88 Idaho 426, 400 P.2d 390 (1965); Burge v. State, 90 Idaho 473, 413 P.2d 451 (1966); State v. Rawson, 10 Idaho 308, 597 P.2d 31 (1979); State v. Avery, 100 Idaho 409, 499 P.2d 300 (1979); Kyle v. Beco Corp., 109 Idaho 267, 707 P.2d 378 (1985); Williams v. State Legislature, 111 Idaho 156, 722 P.2d 465 (1986); State v. Fodge, 121 Idaho 192, 824 P.2d 123 (1992).

ANALYSIS

Court jurisdiction. *
 Delegation of judicial powers.
 Delegation of legislative authority.
 Emergencies.
 Executive power in general.
 Fact finding bodies.
 General rule.
 Initiated legislation.
 Judicial power in general.
 —Regulation of legal practice.
 —Review of administrative rules.
 Legislative and executive functions.
 Legislative power in general.
 Limitation on interbranch encroachment.
 —Power of lieutenant governor.
 Pardon or parole.
 Power of appointment.
 Proof of will.
 Prosecuting attorney.
 Rules and regulations.
 Sentencing of certain criminals.
 Separation of powers.
 State engineer.
 Taxation.

Court Jurisdiction.

Courts are generally a proper forum in which to challenge legislative enactments.

The legislature has not attempted to remove from the jurisdiction of trial courts challenges to Idaho Public Utilities Commission related legislation. *Miles v. Idaho Power Co.*, 116 Idaho 635, 778 P.2d 757 (1989).

The district court did not err in denying defendant's motions to remand to the magistrate division because the magistrate conducted a probable cause hearing only as to the charge of assault upon a police officer and when two weeks after that hearing, magistrate voluntarily disqualified himself from the case after defendant filed a motion to disqualify the magistrate based on his affiliation with the National Guard and subsequently, another magistrate conducted another preliminary hearing on the assault charge and independently determined probable cause. *State v. Hardman*, 121 Idaho 873, 828 P.2d 902 (Ct. App. 1992).

Delegation of Judicial Powers.

Sterilization act is not unconstitutional as attempting to delegate judicial powers to the executive board, which was the board of eugenics. *State v. Troutman*, 50 Idaho 673, 299 P. 668 (1931).

Neither the department of finance nor its commissioner belongs to the judicial branch of the government and the legislature is prohibited by the constitution from conferring judicial powers on them, as attempted in the sales tax act. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

A Public Utilities Commission rule which granted its hearing officers the unlimited discretion to decide who should appear and represent parties in various proceedings before that body was an impermissible delegation of authority by the commission under Idaho Const., Art. 5, § 13 and this section, since the commission is without authority in the first instance to promulgate any rules allowing third persons unconnected with the entity they are representing to engage in the practice of law in proceedings before it. *Idaho State Bar Ass'n v. Idaho Pub. Utils. Comm'n*, 102 Idaho 672, 637 P.2d 1168 (1981).

The Idaho Constitution vests the courts with authority to determine the priority of claimed rights to use water, and where the State's claims are submitted under the Snake River Basin Adjudication (SRBA) statutes in the same manner as the claims of private citizens, then the standards for resolving those claimed rights are in no way different from the judicial standards used to adjudicate all other claims, which require adjudication based on priorities of beneficial use, and do not require the district court to undertake an initial policy determination. *State ex rel. Higginson v. United States*, 128 Idaho 246, 912 P.2d 614 (1995).

Delegation of Legislative Authority.

Session Laws 1925, chs. 89, 90, pp. 124, 128 (see § 3-402 et seq.), amending S. L. 1923, ch. 211, p. 343, are not violative of Constitution in delegating legislative power to Supreme Court or judicial power to board. In re Edwards, 45 Idaho 676, 266 P. 665 (1928).

Courts must respect reasonable exercise of constitutionally delegated legislative authority. Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

The revolving fund statute for current expenses of industrial accident board does not delegate legislative authority to the state board of examiners in violation of this section. Suppiger v. Enking, 60 Idaho 292, 91 P.2d 362 (1939).

Since under § 39-1447 the Idaho Health Facilities Authority can act only for a limited purpose in a limited manner after finding certain conditions exist, the powers granted in § 39-1447 are not lawmaking powers and there is no grant of unbridled discretion, therefore neither this section nor Const., art. 3, § 1 has been violated. Board of County Comm'rs v. Idaho Health Facilities Auth., 96 Idaho 498, 531 P.2d 588 (1975).

Sections 37-2201 (repealed) and 37-2210 (repealed) did not constitute improper delegations of legislative authority. State v. Kellogg, 98 Idaho 541, 568 P.2d 514 (1977).

While Article II of the Idaho Constitution prohibits the legislature from usurping powers properly belonging to the judicial department, it also prohibits the judiciary from improperly invading the province of the legislature; thus, the 1994 legislative revisions and amendments to the Snake River Basin Adjudication (SRBA) statutes, which redefined the role of the Director of the Idaho Department of Water Resources and the role of various state agencies in the SRBA, were a proper exercise of legislative authority to the extent that the statutes prescribe substantive law and do not conflict with rules of the court. State ex rel. Higginson v. United States, 128 Idaho 246, 912 P.2d 614 (1995).

Emergencies.

The legislature's determination of an emergency in an act is a policy decision exclusively within the ambit of legislative authority, and the judiciary cannot second-guess that decision; in the absence of a legislative invasion of constitutionally protected rights, the judicial branch of government must respect and defer to the legislature's exclusive policy decisions. Idaho State AFL-CIO v. Leroy, 110 Idaho 691, 718 P.2d 1129 (1986).

Executive Power In General.

Commission created by joint resolution of legislative bodies can exercise no executive functions. Balderston v. Brady, 17 Idaho 567, 107 P. 493 (1910).

Encroachment of the state departments upon the functions of the other departments of the state is not prohibited by the United States Constitution. Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

Upon appeal to the Supreme Court from an order of the Public Utilities Commission, findings of the commission are presumptively correct, and the function of the court is only to determine whether the order is valid and reasonable, and whether the order is contrary to any constitutional right. Nez Perce Roller Mills v. Public Utils. Comm'n, 54 Idaho 696, 34 P.2d 972 (1934).

Fact Finding Bodies.

The subsidiary powers of the Idaho Children's Commission are to conduct a study and appraisal, make findings and recommendations relative to certain subject matters involving children and to report to the governor in order that he may make appropriate budgetary decisions for submission to the next session of the legislature, therefore clearly the commission is a fact finding and fact evaluating body, to provide information to the legislature and not exercising legislative functions and such act is not violative of the Constitution. Jewett v. Williams, 84 Idaho 93, 369 P.2d 590 (1962).

General Rule.

Where the constitution requires that one department of the government shall not act before another can take hold of, or give relief in, the same matter, the constitutional requirement is mandatory and must be observed. State ex rel. Hansen v. Parsons, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, State ex rel. Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

Initiated Legislation.

Initiated legislation may be repealed by the legislature. Luker v. Curtis, 64 Idaho 703, 136 P.2d 978 (1944).

Judicial Power In General.

Judicial department can not attempt to prohibit either of other departments of government from acting within recognized scope of its respective branches of government, but may inquire into legal effect of such action after it has been taken. Stein v. Morrison, 9 Idaho 426, 75 P. 246 (1904).

Legislature has no power to prescribe time or place of hearing and decision of any case pending on appeal in Supreme Court. Talbot v. Collins, 33 Idaho 169, 191 P. 354 (1920).

Supreme Court can not substitute its judgment for that of the governor and the legislature upon their respective acts and therefore will refuse to review governor's determination of necessity for extraordinary session of the legislature. Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

The court is without power to change the interpretation of a statute placed thereon by it, which has had the sanction of the lawmakers for many years — no amendment having been passed. In *re* Speer, 53 Idaho 293, 23 P.2d 239, 88 A.L.R. 1086 (1933).

Section 24 of the sales tax act (S.L. 1935 [1st Ex. Sess.], ch. 12, partially invalid and now repealed) attempts to deprive the judicial department of power and jurisdiction which rightfully pertains to it as a coordinate branch of government. It closes the door of justice to persons deprived of their property without due process of law and denies them a speedy remedy for the injury thereby inflicted on them. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

The wisdom of legislation as, for example, the purchasing of toll bridges by the state is not within the ambit of the judicial function, but is a matter to be determined by the legislative and executive branches of the government, with which determination the courts have no concern. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

The contention that a constitutional question is not properly raised will not be determined, but the case will be decided on its merits where it has been briefed and argued, and it involves a question of great public importance. *Luker v. Curtis*, 64 Idaho 703, 136 P.2d 978 (1943).

Determination of mental and moral qualifications of applicants for the bar has been a judicial function, as evidenced by statutes and judicial decisions in Idaho. In *re* Kaufman, 69 Idaho 297, 206 P.2d 528 (1949).

Where that part of the Idaho dredge mining protection act providing for an appeal to the Supreme Court was held unconstitutional, it left the act without provision for due process. *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957).

Because the provision of the dredge mining protection act which provided for an appeal directly to the Supreme Court does not in itself appear to be an integral or indispensable part of the act, it may be stricken therefrom without affecting the balance of the act. *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957).

While courts have inherent power to control and prevent abuse of their orders and processes, they do not have jurisdiction to supervise matters of ordinary prison discipline. *Mahaffey v. State*, 87 Idaho 228, 392 P.2d 279 (1964).

Merely seeking the office of probate judge is not exercising judicial powers, so as to prohibit a candidate from seeking the office while holding a position as probation officer. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

Since the authority possessed by the courts to sentence necessarily includes power to sus-

pend whole or any part of that sentence in proper cases and this being more than a bare rule of substantive law subject to change by the legislature, inherent right of the judicial department, placing separation of powers concept above and beyond the rule of mandatory action imposed by legislative fiat, the portion of a former law making a sentence mandatory "without any right to exercise judicial discretion in said matter" was unconstitutional and therefore null, void and unenforceable. *State v. McCoy*, 94 Idaho 236, 486 P.2d 247 (1971).

The district judge's authority to supervise the clerk of the district court in the discharge of clerical duties does not include the authority or power to dictate to the clerk who shall be hired as an assistant or deputy. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

The district judge, in the exercise of his or her supervisory power over the clerical activities of the clerk of the district court, controls the assignment of persons hired by the clerk. If the clerk makes an assignment of personnel to a judicial function which the judge finds unacceptable, the judge can refuse to accept assignment; consequently, the district judge has the power to require a reassignment of personnel to assist in judicial-related functions. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

The power and control of the judicial branch over the office of the clerk of the district court is not absolute; it cannot be exercised when the clerk is carrying out the duties of a county auditor and recorder. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

The Idaho Supreme Court is not precluded from reviewing the constitutionality of a proposed course of action merely because both the executive and legislative branches happen to concur in supporting it. Constitutional rights, as well as the court's duty to faithfully interpret the Idaho constitution and the federal constitution, do not wane before united efforts of the legislature and the governor. *Miles v. Idaho Power Co.*, 116 Idaho 635, 778 P.2d 757 (1989).

Passing on the constitutionality of statutory enactments, even enactments with political overtones, is a fundamental responsibility of the judiciary. *Miles v. Idaho Power Co.*, 116 Idaho 635, 778 P.2d 757 (1989).

A county board of commissioners does not have the authority to promulgate policies or issue orders which limit or direct the hiring decisions of a clerk of the district court. *Estep v. Commissioners*, 122 Idaho 345, 834 P.2d 862 (1992).

The clerk of the court, by virtue of the office created in Const. Art. 5, § 16, also is possessed of other powers and duties which are nonjudicial, but the clerk is nevertheless and

foremost a judicial official. *Estep v. Commissioners*, 122 Idaho 345, 834 P.2d 862 (1992).

—Regulation of Legal Practice.

The Public Utilities Commission's rule of procedure governing appearances and representation was valid to the extent that it allowed representation of a sole proprietorship by the owner, a partnership by the partners or a corporation or nonprofit organization by their officers, since that is in the nature of self-representation by a natural person; however, to the extent that the rules authorized representation of an entity by a third person unconnected with the entity, it violated this section and Const., Art. 5, § 13, by infringing on the power of the Supreme Court to define and regulate the practice of law. *Idaho State Bar Ass'n v. Idaho Pub. Utils. Comm'n*, 102 Idaho 672, 637 P.2d 1168 (1981).

—Review of Administrative Rules.

Any legislative approval of a rule, which is granted pursuant to former law regarding procedure for legislative approval of administrative rules, had merely a nonbinding advisory effect upon the Supreme Court in its resolution of legal issues; to permit the legislature to decide what administrative rules do or do not conflict with statutory law would constitute an abrogation of the judicial power in violation of this section and Arts. 5, §§ 2 and 13 of the Idaho Constitution. *Holly Care Center v. State, Dep't of Emp.*, 110 Idaho 76, 714 P.2d 45 (1986).

Legislative and Executive Functions.

The wisdom and necessity of state purchases of property for toll-bridges was a legislative and executive function and not for the court to consider or pass upon. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Legislative Power in General.

This section is not violated by statute providing that, upon ascertainment of existence of facts therein mentioned, district court shall render judgment detaching agricultural lands from a municipality. *Lyon v. Payette*, 38 Idaho 705, 224 P. 793 (1924).

Clause in a statute: "An adjudication that any part of this act is unconstitutional shall not affect the validity of the act as a whole or any other provision thereof," is but an aid to interpretation and not an inexorable command; it reverses the presumption that the legislature intends an act to be effective as an entirety. *Utah Power & Light Co. v. Pfof*, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

It is the duty of the legislature to make laws and the duty of the court to construe them and, if a law as construed by the court is to be changed, that is a legislative, not a judicial function. In *re Speer*, 53 Idaho 293, 23 P.2d 239 (1933).

The insertion in an act, the cliché that "if any section or provision or part thereof is for any reason held to be unconstitutional, void, or inoperative, it is the intention that the remaining sections and provisions and parts thereof shall remain in full force and effect" does not prevent the Supreme Court from declaring all of an act unconstitutional where, to give effect to the valid part, would so emasculate the act as to render it meaningless and ineffectual for any purpose and would defeat the legislative intent for all practical purposes. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Where an act attempts to create a board, bureau, or commission, but when stripped of its corporate proprietary and unconstitutional powers, it will be a mere embryo skeleton without vitals or substance incapable of administration, the whole act and its attempted to be created board or commission must also fail. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

It is for the legislature, not the courts, to say what an indictment or information shall contain and when the legislature has said what is required to make an accusation sufficient, the courts are not permitted to say the contrary. *State v. McMahan*, 57 Idaho 240, 65 P.2d 156 (1937).

The court does not exercise legislative functions in interpreting, construing or giving meaning to a legislative act. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

Any legislation which attempts to require courts to admit candidates for the bar on standards other than those accepted or established by the courts is unconstitutional both as an invasion of the judicial power and a violation of the constitution establishing separate branches of government. In *re Kaufman*, 69 Idaho 297, 206 P.2d 528 (1949).

Statute which required Supreme Court to admit to the bar any graduate of certified law school upon furnishing proof of good moral character, was unconstitutional as an invasion of the judicial function to prescribe maximum qualifications for applicants for the bar. In *re Kaufman*, 69 Idaho 297, 206 P.2d 528 (1949).

Legislature has the power to provide minimum qualifications for applicants to the bar, but it is the inherent right of the court to prescribe the maximum qualifications for ap-

plicants to the bar, and no legislature can force the courts to accept any candidate for the bar until the courts are themselves satisfied that such qualifications are sufficient. In re Kaufman, 69 Idaho 297, 206 P.2d 528 (1949).

It is conceded that the creation, destruction, expansion or contraction of school districts is a legislative function. The legislature has plenary powers in such matters. Electors v. State Bd. of Educ., 78 Idaho 602, 308 P.2d 225 (1957).

A statute authorizing the district court on finding certain facts to detach lands from a municipality does not vest legislative power in the court. Electors v. State Bd. of Educ., 78 Idaho 602, 308 P.2d 225 (1957).

The power to make and determine policy for the government of the state is vested in the legislature. Rich v. Williams, 81 Idaho 311, 341 P.2d 432 (1959).

The contention of defendant that part "c" of § 72-1355 is an attempt to exclude the courts from the exercise of powers properly belonging to the judicial department and is contrary to the constitution in that such part sets up a new court, places the employer on trial where the director makes findings of fact and conclusions of law, such being judicial functions, falls before the supreme court's recognition of the power of the legislature to confer upon administrative officers and agencies of the executive department functions and powers, quasi judicial in character to make findings of fact and to enter orders and judgments thereon in the application of legislative acts to such fact determinations, the court further having held that such legislation was not repugnant to the constitution as a delegation of legislative power so long as it provides for notice, an opportunity for a fair hearing and there is no attempt to give finality to the determination. State v. Concrete Processors, Inc., 85 Idaho 277, 379 P.2d 89 (1963).

Section 19-2513A (now repealed) does not violate the legislative powers granted in Const., art. 3, § 1, nor the separation of powers mandated by Const., art. 2, § 1. State v. Cootz, 110 Idaho 807, 718 P.2d 1245 (Ct. App. 1986).

The Supreme Court is bound to respect the reasonable exercise by the legislature of powers expressly delegated to it by the constitution of this state, and in the absence of other constitutional offense cannot interfere with it. Idaho State AFL-CIO v. Leroy, 110 Idaho 691, 718 P.2d 1129 (1986).

The district court's modification of the herd district boundaries by exclusion of federal lands was improper as an exercise of a legislative function by the court; the district court properly should have simply ruled that the herd district was invalid due to the inclusion

of federal land. Miller v. Miller, 113 Idaho 415, 745 P.2d 294 (1987).

Read together, this section, Const., Art. 3, §§ 1 and 15 stand for the proposition that, of the three branches of government, only the legislature has the power to make law. Mead v. Arnell, 117 Idaho 660, 791 P.2d 410 (1990).

Limitation on Interbranch Encroachment.

This section contemplates limited interbranch encroachment when it follows the separation of powers pronouncement with the language, "except as in this constitution expressly directed or permitted." Sweeney v. Otter, 119 Idaho 135, 804 P.2d 308 (1990).

—Power of Lieutenant Governor.

The lieutenant governor does not violate the constitutional separation of powers as set forth in this section by voting when the Senate is equally divided unless there are other constitutional limitations upon that power. Sweeney v. Otter, 119 Idaho 135, 804 P.2d 308 (1990).

Pardon or Parole.

The judicial department could not attempt to prohibit either of the other departments from acting within the recognized scope of their respective branches of government, but the legal effect of such action after it has been taken may be inquired into by the court. Courts may determine the validity of a pardon, commutation or parole as affected by the question whether the board of pardons had the power to act. Miller v. Meredith, 59 Idaho 385, 83 P.2d 206 (1938).

There is no conflict between this provision for separation of powers and § 20-223, a parole statute requiring a prisoner to serve one third of his sentence, if convicted of certain named crimes, before he is eligible for parole, since Idaho Const., art. 4, § 7 empowering the executive branch to grant commutations and pardons does not speak of parole. Standlee v. State, 96 Idaho 849, 538 P.2d 778 (1975).

Power of Appointment.

This section was not infringed by S. L. 1899, p. 345, the law empowering the governor to appoint state board of medical examiners, and to fill vacancies in board without consent of senate. In re Inman, 8 Idaho 398, 69 P. 120 (1902).

An act, S.L. 1913, ch. 16, p. 58, authorizing district judge of judicial district in which drainage district is located to appoint drainage commissioners for district, is not in violation of constitution, and is not an infringement by judicial department of state government upon functions of executive branch of government. Elliott v. McCrea, 23 Idaho 524, 130 P. 785 (1913).

Any one of the three departments of government may, under authority of statute, appoint for any class of office in any of the three governmental departments. *Ingard v. Barker*, 27 Idaho 124, 147 P. 293 (1915).

R.C. § 1310 (since repealed) providing for board of horticultural inspection does not violate this provision of constitution. *Ingard v. Barker*, 27 Idaho 124, 147 P. 293 (1915).

The legislative grant to the governor of power to appoint toll-bridge commissioners without the consent of the senate was not an unconstitutional delegation of legislative authority within the contemplation of this section. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Rule 4(d)(4) (now Rule (4)(d)(5)) of the Rules of Civil Procedure could not give the exclusive right to the attorney general to represent the state in all actions involving the highway department, since no rule of procedure could impair or defeat the legislatively conferred power of the board of highway directors to employ and fix the compensation of its necessary legal counsel under former law. *Padgett v. Williams*, 82 Idaho 28, 348 P.2d 944 (1960); *Padgett v. Williams*, 82 Idaho 114, 350 P.2d 353 (1960).

Proof of Will.

A statute requiring that a lost or destroyed will be proved by at least two credible witnesses is not in conflict with the constitutional provision prohibiting the legislature from depriving the judicial department of any of its power or jurisdiction. *Hull v. Cartin*, 61 Idaho 578, 105 P.2d 196 (1940).

This article does not prohibit the enactment of a law requiring the proof of a lost will to be clearly made by the evidence of two witnesses. *Hull v. Cartin*, 61 Idaho 578, 105 P.2d 196 (1940).

Prosecuting Attorney.

Prosecuting attorney is not executive officer under constitution and statutes, but belongs to judicial department of state organization. *State v. Wharfield*, 41 Idaho 14, 236 P. 862 (1925).

While duties of prosecuting attorney may call upon him to perform executive functions, it can not reasonably be said that he is intended by constitution to be executive officer or to be included in executive department. *State v. Wharfield*, 41 Idaho 14, 236 P. 862 (1925).

Rules and Regulations.

While rules and regulations enacted by administrative agencies may be given the force and effect of law, they do not rise to the level of statutory law; only the legislature can make law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

The origin of rule making in an administra-

tive capacity stems from a delegation from the legislature, not a constitutional grant of power to the executive, and such rules and regulations promulgated thereunder are less than the equivalent of statutory law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Rule making that comes from a legislative delegation of power is neither the legal nor functional equivalent of constitutional power; it is not constitutionally mandated but rather, it comes to the executive department through delegation from the legislature. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

The condition enunciated in § 67-5218 is that the rules which the legislature has delegated the authority to promulgate comply with the legislative intent of the enabling statute, and this conditioned grant of authority is consistent with the principle of separation of powers as set forth in this section as these acts relate to the executive department. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Former law regarding committee action on administrative rules referred to it made it clear that the legislature has reserved unto itself the power to reject an administrative rule or regulation as part of the statutory process and this reservation was not an intrusion on the judiciary's constitutional powers. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Sentencing of Certain Criminals.

Section 19-2520 which imposes an additional prison term for committing certain crimes while using a firearm does not unconstitutionally violate the right to bear arms, as embodied in Const., Art. I, § 11, nor does it impermissibly infringe upon the constitutional separation of legislative and judicial functions, embodied in this section. *State v. Grob*, 107 Idaho 496, 690 P.2d 951 (Ct. App. 1984).

There is no constitutional violation in allowing the state department of corrections, a department of the executive branch, to insert an escape sentence between the fixed and indeterminate portions of another sentence imposed by the judiciary. *Doan v. State*, 132 Idaho 796, 979 P.2d 1154 (1999).

Separation of Powers.

There is no conflict between this constitutional provision and legislation creating public health districts since under the legislation the levying and collecting of taxes is performed at and by the county level of government properly acting in its executive capacity, and the taxing function of the county is not intruded upon. *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972).

Section 20-228, which provides that the time spent on parole shall not be considered to have been a part of a prisoner's sentence

when that prisoner is recommitted following a parole violation, is constitutional and does not violate the separation of powers doctrine of this section. *Flores v. State*, 109 Idaho 182, 706 P.2d 71 (Ct. App. 1985).

The Commission of Pardons and Paroles had authority to add the intensive supervision program conditions to the defendant's parole without violating the separation of powers doctrine of this section. *Mellinger v. Idaho Dep't of Cors.*, 114 Idaho 494, 757 P.2d 1213 (Ct. App. 1988).

The principle that neither the legislature nor the executive can in any way regulate or alter the Supreme Court's jurisdiction is basic to the doctrine of separation of powers. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Any potential error at the preliminary hearing allegedly caused by magistrate's affiliation with the National Guard, was cured by the subsequent jury trial, whose fairness was not challenged by defendant on appeal. *State v. Hardman*, 121 Idaho 873, 828 P.2d 902 (Ct. App. 1992).

State Engineer.

The act of S.L. 1903, p. 223, which provided that a contest might be brought against permit issued for appropriation of waters and vested in state engineer power to cancel such permit, does not vest in state engineer judicial power in contravention of this section, but acts of state engineer thereunder are purely administrative, even though they include some quasi-judicial powers such as may be conferred on ministerial officer. *Speer v. Stephenson*, 16 Idaho 707, 102 P. 365 (1909).

The reclamation statute does not vest judicial power in the state engineer in violation of this section; his powers under the act are purely administrative in character. *Twin Falls Canal Co. v. Huff*, 58 Idaho 587, 76 P.2d 923 (1938).

Taxation.

Supreme Court is not permitted to substitute its judgment for that of the legislature as to the wisdom of legislation, such as the graduated tax on chain stores. *J.C. Penney Co. v. Diefendorf*, 54 Idaho 374, 32 P.2d 784 (1934).

County commissioners act as a board of equalization and the district court, on appeal from their action, does not assess the property

but equalizes the assessment made so that the statute authorizing the appeal is valid. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

Opinions of Attorney General. An appointment of a member of the judiciary to the Children's Trust Account Board would violate the separation of powers clause. OAG 85-5.

Despite the presumption in favor of a statute's constitutionality, the provision in § 42-1503 that purports to authorize the legislature to reject, by concurrent resolution, a minimum stream flow approved by the Director of the state Department of Water Resources contravenes Const., this section, Const., Art. 3, §§ 1 and 15, and Art. 4, § 10. OAG 87-6.

Since the lieutenant governor was given the casting vote to secure an orderly resolution of the senate's business and this power is expressly granted in the Idaho Constitution and has no apparent limitation, based upon this express authority and the lack of any articulated limitations placed thereon, the lieutenant governor may cast the tie-breaking vote during the organizational session of the Idaho Senate if the members present are equally divided in their choice of a president pro tem. OAG 90-7.

The lieutenant governor is expressly authorized by Const. art. 4, § 13, to cast a vote when the senate is equally divided. This express power does not violate the separation of powers provisions of this section, nor is there any other legal basis to limit the lieutenant governor's vote-casting authority. OAG 90-7.

Section 63-3027A, as amended by S.L. 1991, ch. 115, § 1, p. 243, affecting computation of Idaho income taxes paid by nonresidents, retroactive to January 1, 1985, will apparently withstand a challenge made under the federal due process clause and contract clauses of the federal and state constitutions and will also probably withstand scrutiny under art. 11, § 12, of the Idaho Constitution; however, a separation of powers challenge will likely succeed. OAG 91-2.

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1695.

16 Am. Jur. 2d, Constitutional Law, §§ 294-302.

16 C.J.S., Constitutional Law, §§ 111, 112.

Article III

LEGISLATIVE DEPARTMENT

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SECTION.

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§ 1. Legislative power — Enacting clause — Referendum — Initiative. — The legislative power of the state shall be vested in a senate and house of representatives. The enacting clause of every bill shall be as follows: "Be it enacted by the Legislature of the State of Idaho."

The people reserve to themselves the power to approve or reject at the polls any act or measure passed by the legislature. This power is known as the referendum, and legal voters may, under such conditions and in such manner as may be provided by acts of the legislature, demand a referendum vote on any act or measure passed by the legislature and cause the same to be submitted to a vote of the people for their approval or rejection.

The people reserve to themselves the power to propose laws, and enact the same at the polls independent of the legislature. This power is known as the initiative, and legal voters may, under such conditions and in such manner as may be provided by acts of the legislature, initiate any desired legislation and cause the same to be submitted to the vote of the people at a general election for their approval or rejection.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 1. The legislative power of the state shall be vested in a senate and house of representatives. The enacting clause of every bill shall be as follows: 'Be it enacted by the legislature of the state of Idaho.'"

It was amended, as proposed by S. L. 1911, page 785, S. J. R. No. 12, and ratified at the general election in November 1912, by adding a second paragraph which read, "The people reserve to themselves the power to approve or reject at the polls any act or measure passed by the legislature. This power is known as the referendum, and legal voters may, under such conditions and in such manner as may be provided by acts of the legislature, demand a referendum vote on any act or measure passed by the legislature and cause the same to be submitted to a vote of the people for their approval or rejection."

It was further amended, as proposed by S. L. 1911, page 786, S. J. R. No. 13, and ratified at the general election in November 1912, by adding a third paragraph which read, "The people reserve to themselves the power to propose laws, and enact the same at the polls independent of the legislature. This power is

known as the initiative, and legal voters may, under such conditions and in such manner as may be provided by acts of the legislature, initiate any desired legislation and cause the same to be submitted to the vote of the people at a general election for their approval or rejection provided that legislation thus submitted shall require the approval of a number of voters equal to a majority of the aggregate vote cast for the office of governor at such general election to be adopted."

It was again amended as proposed by S.L. 1980, p. 1028, S.J.R. No. 112, and ratified at the general election November 4, 1980, to read as it now appears.

Cross ref. Initiative and referendum elections, §§ 34-1801 — 34-1822.

Comp. provisions: Cal. Art. 4, § 1.

Mont. Art. 3, §§ 4, 5.

Ore. Art. 4, § 1.

Utah. Art. 6, § 1.

Wash. Art. 2, § 1.

Cited in: People ex rel. Att'y Gen. v. Alturas County, 6 Idaho 418, 55 P. 1067, 44 L.R.A. 122 (1899); State v. Nelson, 36 Idaho 713, 213 P. 358 (1923); Kerley v. Wetherell, 61 Idaho 31, 96 P.2d 503 (1939); Padgett v. Williams, 82 Idaho 114, 350 P.2d 353 (1960);

Dredge Mining Control — Yes!, Inc. v. Cenarrusa, 92 Idaho 480, 445 P.2d 655 (1968); Kerner v. Johnson, 99 Idaho 433, 583 P.2d 360 (1978); Greater Boise Auditorium Dist. v. Royal Inn, 106 Idaho 884, 684 P.2d 286 (1984); Rudeen v. Cenarrusa, 136 Idaho 560, 38 P.3d 598 (2001).

ANALYSIS

Constitutionality of acts.
 —Partial invalidity.
 Delegation of power.
 Extent of legislative power.
 Initiative power.
 Judicial interpretation.
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 Referendum.
 Rules and regulations.

Constitutionality of Acts.

The court is under a duty to adopt a construction of legislation that will sustain, rather than overturn it, where it is open to both constructions. Idaho Gold Dredging Co. v. Balderston, 58 Idaho 692, 78 P.2d 105 (1938); State v. Peterson, 61 Idaho 50, 97 P.2d 603 (1939).

A statute is not so ambiguous or unintelligible as to be unconstitutional for uncertainty, if sufficiently definite to support a reasonable construction. Idaho Gold Dredging Co. v. Balderston, 58 Idaho 692, 78 P.2d 105 (1938).

The contention that a constitutional question is not properly raised will not be determined, but the case will be decided on its merits where it has been briefed and argued, and it involves a question of great public importance. Luker v. Curtis, 64 Idaho 703, 136 P.2d 978 (1943).

Since Health Facilities Authority under the Idaho Health Facilities Act (§§ 39-1441 — 39-1460) uses funds to better the existing health facilities throughout the state, when operated either by public or private nonprofit entities in order to make available to the citizens of the state the means to improve hospital facilities or to allow hospitals to reduce their debt related expenses and channel more of their resources into health related expenditures, the moneys expended under the Act carry out a public purpose and thus the Authority does not violate Const., art. 3. Board of County Comm'rs v. Idaho Health Facilities Auth., 96 Idaho 498, 531 P.2d 588 (1975).

—Partial Invalidity.

Unless the court can say that it clearly appears that a statute with unconstitutional portions eliminated would not have been enacted, it should sustain the remaining portions. Stark v. McLaughlin, 45 Idaho 112, 261 P. 244 (1927).

The insertion in an act, the cliché that "if any section or provision or part thereof is for any reason held to be unconstitutional, void, or inoperative, it is the intention that the remaining sections and provisions and parts thereof shall remain in full force and effect" does not prevent the Supreme Court from declaring all of an act unconstitutional where, to give effect to the valid part, would so emasculate the act as to render it meaningless and ineffectual for any purpose and would defeat the legislative intent for all practical purposes. State Water Conservation Bd. v. Enking, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, State, Dep't of Parks v. Idaho Dep't of Water Admin., 96 Idaho 440, 530 P.2d 924 (1974), and Idaho Water Resource Bd. v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976).

Where the purpose of a statute fails, incidental powers conferred, as on a board, bureau, commission or department created by statute for the mere purpose of operating an unconstitutional part, must also fail, as was the case with Session Laws 1935 (1st Ex. Sess.), Ch. 60. State Water Conservation Bd. v. Enking, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, State, Dep't of Parks v. Idaho Dep't of Water Admin., 96 Idaho 440, 530 P.2d 924 (1974), and Idaho Water Resource Bd. v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976).

Where an act attempts to create a board, bureau, or commission, but when stripped of its corporate proprietary and unconstitutional powers, it will be a mere embryo skeleton without vitals or substance incapable of administration, the whole act and its attempted to be created board or commission must also fail. State Water Conservation Bd. v. Enking, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, State, Dep't of Parks v. Idaho Dep't of Water Admin., 96 Idaho 440, 530 P.2d 924 (1974), and Idaho Water Resource Bd. v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976).

Delegation of Power.

Legislative power of state is vested in senate and house of representatives and it is fundamental principle of representative government that, except as authorized by organic law, legislative department can not delegate its powers to make laws to any other authority. State v. Nelson, 36 Idaho 713, 213 P. 358 (1923); State v. Purcell, 39 Idaho 642, 228 P. 796 (1924).

One of settled maxims in constitutional law is that power conferred upon legislature to make laws can not be delegated by that department to any other body or authority. State v. Purcell, 39 Idaho 642, 228 P. 796 (1924).

Under this provision, the legislative function is complied with where a statute is suffi-

ciently certain to declare the legislative purpose and the subject-matter meant to be covered by the act; the legislature may leave to administrative agencies the selection of the means and the time and place of execution of the legislative purpose and the making of rules suitable to that end. *State ex rel. Taylor v. Taylor*, 58 Idaho 656, 78 P.2d 125 (1938).

Department of public works statute authorizing commissioner to cooperate with the federal government in the construction of roads does not confer legislative power on the commissioner or the department. *State ex rel. Taylor v. Taylor*, 58 Idaho 656, 78 P.2d 125 (1938).

The legislative grant to the governor of power to appoint toll-bridge commissioners without the consent of the senate was not an unconstitutional delegation of authority. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Former law authorizing commissioner of public works to issue regulations reducing weight of vehicles on public highways of the state was held constitutional. *State v. Heitz*, 72 Idaho 107, 238 P.2d 439 (1951).

Statute which requires savings and loan associations to comply with future rules and regulations of Congress and federal agency as a condition precedent to doing business is unconstitutional as an unlawful delegation of legislative authority. *Idaho Sav. & Loan Ass'n v. Roden*, 82 Idaho 128, 350 P.2d 225 (1960).

The authority granted to a local governing body under § 50-2005 to make findings does not constitute an unlawful delegation of legislative power because only a fact finding status exists in the local governing body and there are sufficient and adequate standards contained in § 50-2005 especially when read in combination with § 50-2018. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Since under § 39-1447 the Idaho Health Facilities Authority can act only for a limited purpose in a limited manner after finding certain conditions exist, the powers granted in § 39-1447 are not lawmaking powers and there is no grant of unbridled discretion or delegation of legislative authority, therefore neither Const., Art. 2, § 1 nor this section has been violated. *Board of County Comm'rs v. Idaho Health Facilities Auth.*, 96 Idaho 498, 531 P.2d 588 (1975).

Sections 37-2201 (repealed) and 37-2210 (repealed) did not constitute improper delegations of legislative authority. *State v. Kellogg*, 98 Idaho 541, 568 P.2d 514 (1977).

Although it is well established that the legislature cannot delegate any of its power to make laws to any other body or authority, the legislature can empower an agency or an official to ascertain the existence of facts or conditions upon which the law becomes oper-

ative. *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978).

Section 43-2203 does not constitute an unlawful delegation of legislative authority prohibited by this section; rather, the board is authorized to act only for a limited purpose in a limited manner after finding that certain conditions exist. *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978).

Instead of requiring standards to limit the delegation of legislative authority to other branches of government, the current view is that the legislation itself or the agency's internal guidelines should provide meaningful safeguards against arbitrary decision making, such as the right to a hearing or judicial review of agency decision making. *Sun Valley Co. v. City of Sun Valley*, 109 Idaho 424, 708 P.2d 147 (1985).

Section 19-2513A, providing for an alternative fixed term sentence (repealed effective February 1, 1987), does not violate the legislative powers granted in Const., Art. 3, § 1, nor the separation of powers mandated by Const., Art. 2, § 1. *State v. Cootz*, 110 Idaho 807, 718 P.2d 1245 (Ct. App. 1986).

Subdivision (3)(b) of § 42-1406A (uncodified) as it relates to the inclusion of "any adjudicated tributary" in the adjudication of water rights of the Snake River basin refers to the consent contained in the McCarran Amendment (43 U.S.C. § 666) and not to some special consent of the United States; to construe that subdivision as requiring special consent of the United States would constitute an unlawful delegation of legislative authority in violation of this section. *State ex rel. Higginson v. United States*, 115 Idaho 1, 764 P.2d 78 (1988), cert. denied, 490 U.S. 1005, 109 S. Ct. 1639, 104 L. Ed. 2d 155 (1989).

Extent of Legislative Power.

It is well settled that a constitution is in no manner a grant of power to the legislature, but is a limitation placed thereon; if no interdiction of a legislative act is found in the constitution, then it is valid. *State v. Dolan*, 13 Idaho 693, 92 P. 995, 14 L.R.A. (n.s.) 1259 (1907); *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083, 1916E Ann. Cas. 282 (1914); *Independent Sch. Dist. v. Pfost*, 51 Idaho 240, 4 P.2d 893, 84 A.L.R. 820 (1931).

The state legislature possesses all legislative power and authority except as restrained by the Constitution of this state or that of the United States and it may enact a valid primary election law. *Koelsch v. Girard*, 54 Idaho 452, 33 P.2d 816 (1934).

It is conceded that the creation, destruction, expansion or contraction of school districts is a legislative function. The legislature has plenary powers in such matters. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

The power to make and determine policy for the government of the state is vested in the legislature. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

Nowhere in this article, wherein the powers of the legislature are limited, is there to be found any specific limitation on the legislature as respects amendments or revisions of the constitution. *Smith v. Cenarrusa*, 93 Idaho 818, 475 P.2d 11 (1970).

Restricting the retail sale of liquor to locations within an incorporated city, with express exemptions for golf courses, airports and lake resorts, is a valid and constitutional exercise of plenary power by the legislature. *State v. Cantrell*, 94 Idaho 653, 496 P.2d 276 (1972).

The Idaho Constitution vests the power to enact substantive laws in the legislature, and this power is not restricted by the court's authority to enact rules of procedure to be followed in district courts. *State ex rel. Higginson v. United States*, 128 Idaho 246, 912 P.2d 614 (1995).

Initiative Power.

The initiative provision of the Constitution does not give any more force to initiated legislation than to legislative acts, but they are both on an equal footing. *Luker v. Curtis*, 64 Idaho 703, 136 P.2d 978 (1943).

The manner, method, and instrumentalities through which the people of the state determined to legislate, are "political questions" involving governmental authorities, and policy over which the courts have no jurisdiction. *Luker v. Curtis*, 64 Idaho 703, 136 P.2d 978 (1943).

Initiated legislation may be repealed by the legislature. *Luker v. Curtis*, 64 Idaho 703, 136 P.2d 978 (1943).

Initiative legislation is on an equal footing with legislation enacted by the state and must comply with the same constitutional requirements as legislation enacted by the Idaho legislature. *Westerberg v. Andrus*, 114 Idaho 401, 757 P.2d 664 (1988).

Judicial Interpretation.

By interpretation of statutes, the courts do not legislate. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

By the adoption of a constitutional or statutory provision from another jurisdiction after the courts of such jurisdiction have construed the same, the presumption will be indulged that such construction was also adopted. *Bishop v. Morrison-Knudsen Co.*, 64 Idaho 806, 137 P.2d 963 (1943).

Lottery.

Constitution, Art. III, § 20 prohibits the establishment of a lottery through any legislative process, whether exercised by the legislature or by the electorate by initiative.

Westerberg v. Andrus, 114 Idaho 401, 757 P.2d 664 (1988).

Article III, § 20, of the Idaho Constitution, which prohibits the "legislature" from authorizing "any lottery or gift enterprise", also prohibits the electorate from enacting a lottery through the initiative process. *Westerberg v. Andrus*, 114 Idaho 401, 757 P.2d 664 (1988).

Power to Make Law.

Read together, this section, Const., Art. 2, § 1 and Const., Art. 3, § 15 stand for the proposition that, of the three branches of government, only the legislature has the power to make law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Referendum.

As originally written and adopted, the Constitution made no provision for direct legislation. The initiative and referendum clauses were proposed in 1911 as an amendment to this section and it was adopted at the next general election. Our constitutional provision for referendum differs so much from all others that decisions from other states afford no aid in their construction. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

This section makes every act of the legislature subject to referendum. It applies to emergency legislation. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

There is no conflict between the provision for referendum in this section and art. 3, § 22 providing that emergency laws be made effective at time of passage and approval. The referendum clause is not self-operative and was dormant until Laws 1933, ch. 210, § 3 (§§ 34-1801 — 34-1822) was enacted and this act applies to acts for which no emergency exists and for which referendum has been petitioned. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

The right of the people of Idaho to veto any act of the legislature by referendum may only be exercised if a referendum petition is filed as required by I.C. § 34-1803. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

The legislature of this state is authorized by this section to declare an emergency and thereby render an act effective immediately upon its passage; the people of this state are statutorily authorized by § 34-1803 to approve or reject that legislation at the next biennial election. Hence, H.B. 2 (Acts 1985, ch. 2; §§ 44-2001 — 44-2011), designated as an emergency bill by the legislature, was effective immediately and would continue to be effective until the next biennial election, and thereafter only if approved by the voters. *Idaho State AFL-CIO v. Leroy*, 110 Idaho 691, 718 P.2d 1129 (1986).

The right of referendum in this state is not

self-executing. *Idaho State AFL-CIO v. Leroy*, 110 Idaho 691, 718 P.2d 1129 (1986).

Referenda and initiatives in Idaho are constrained to addressing "acts" or "measures" passed by a legislative body; therefore, taxpayer coalition's referendum was not the proper means to reject a county's budgeting process. *Weldon v. Bonner County Tax Coalition*, 124 Idaho 31, 855 P.2d 868 (1993).

Rules and Regulations.

While rules and regulations enacted by administrative agencies may be given the force and effect of law, they do not rise to the level of statutory law; only the legislature can make law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

The origin of rule making administrative capacity stems from a delegation from the legislature, not a constitutional grant of power to the executive, and such rules or regulations promulgated thereunder are less than the equivalent of statutory law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Rule making that comes from a legislative delegation of power is neither the legal nor functional equivalent of constitutional power; it is not constitutionally mandated but rather, it comes to the executive department through delegation from the legislature. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Opinions of Attorney General. Except where the Constitution limits the authority of the legislature with respect to the sale of state property as with respect to endowment and trust property, the legislature may authorize the sale of state buildings and may place the proceeds thereof in the general fund. OAG 83-2.

Despite the presumption in favor of a statute's constitutionality, the provision in § 42-1503 that purports to authorize the legislature to reject, by concurrent resolution, a minimum stream flow approved by the Director of the state Department of Water Resources contravenes Const., Art. 2, § 1, Art. 3, § 15, Art. 4, § 10, and this section. OAG 87-6.

As written, the proposed One Percent Initiative would require a super-majority of two-thirds of the qualified electors in any given district considering a "special tax"; this voting standard for imposing special taxes in excess of the one percent cap will be impossible to implement because there is no means to determine the number of qualified electors in an area. OAG 91-9.

The term "special taxes" has no obvious meaning as used in the proposed One Percent Initiative and it would require a court decision in order to determine the meaning of this phrase. OAG 91-9.

The proposed One Percent Initiative's requirement that "special taxes" be approved by two-thirds of the qualified electors would,

taken literally, conflict with Idaho's Constitution, which allows creation of bonded indebtedness by a two-thirds vote of the qualified electors voting in the election. OAG 91-9.

The attorney general opined that the proposed One Percent Initiative would undermine the ability of government to function in times of emergency and it would conflict with special levies to fund such unpredictable but legally-required items as tort claim judgments and catastrophic medical indigency bills. OAG 91-9.

The proposed One Percent Initiative would deny the constitutional principle of local self-determination and would force discrimination in local taxing authority; consequently, to impose a one percent limitation would require dismantling the system of property taxation under which Idaho has operated since statehood. OAG 91-9.

The proposed One Percent Initiative would repeal existing § 63-923, which is the vestige of the 1978 version of the One Percent Initiative, but it does not repeal, amend or modify any other existing statute and instead, it attempts to insert a one percent limitation on the amount of tax that can be imposed on any real property. OAG 91-9.

A board of county commissioners presently has no statutory authority to adjust the levies of other independent taxing districts and if such authority is impliedly granted by the proposed One Percent Initiative, then each board will become the tax czar in its county. OAG 91-9.

The proposed One Percent Initiative cannot be implemented as written; the Attorney General opined that a reviewing court faced with the options of striking down the One Percent Initiative or upholding the initiative by creating from whole cloth a new tax apportionment system for the State of Idaho would choose the former option. OAG 91-9.

The combined requirements of a one percent property tax limitation contained in the proposed One Percent Initiative, and the uniform levy requirements of art. 7, sec. 5, of the Idaho Constitution create the inevitable result that property taxes in each taxing district will bear no rational relation to the needs of that district or to the wishes of the taxpayers of that district. OAG 91-9.

Six tax increment financing areas now operate in Idaho pursuant to the Local Economic Development Act and the proposed One Percent Initiative would have a serious impact on their ability to repay bonds. OAG 91-9.

It is clear that Idaho voters have a right to vote on any proposed initiative, regardless of whether it is so poorly drafted as to be fatally flawed or even unconstitutional. OAG 91-9.

Collateral References. Discussion of this article in constitutional convention. Constitu-

tional Convention Proceedings, Vol. I, pp. 100, 454, 555.

Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 454; Vol. II, p. 1192.

16 Am. Jur. 2d, Constitutional Law, §§ 318-322.

42 Am. Jur. 2d, Initiative and Referendum, § 3.

73 Am. Jur. 2d, Statutes, §§ 33, 50.

16 C.J.S., Constitutional Law, §§ 18, 113, 114, 107.

82 C.J.S., Statutes, §§ 9, 11, 18-19, 117.

Initiative and referendum measures, formalities. 62 A.L.R. 1349.

Taxpayer's capacity to maintain suit to enjoin submission of initiative, referendum, or recall measure to voters. 6 A.L.R.2d 557.

Right of signer of petition or remonstrance to withdraw therefrom or revoke withdrawal, and time therefor. 27 A.L.R.2d 604.

Power of legislative body to amend, repeal, or abrogate initiative or referendum measure, or to enact measure defeated on referendum. 33 A.L.R.2d 1118.

§ 2. Membership of House and Senate. — (1) Following the decennial census of 1990 and in each legislature thereafter, the senate shall consist of not less than thirty nor more than thirty-five members. The legislature may fix the number of members of the house of representatives at not more than two times as many representatives as there are senators. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may, from time to time, be divided by law.

(2) Whenever there is reason to reapportion the legislature or to provide for new congressional district boundaries in the state, or both, because of a new federal census or because of a decision of a court of competent jurisdiction, a commission for reapportionment shall be formed on order of the secretary of state. The commission shall be composed of six members. The leaders of the two largest political parties of each house of the legislature shall each designate one member and the state chairmen of the two largest political parties, determined by the vote cast for governor in the last gubernatorial*election, shall each designate one member. In the event any appointing authority does not select the members within fifteen calendar days following the secretary of state's order to form the commission, such members shall be appointed by the Supreme Court. No member of the commission may be an elected or appointed official in the state of Idaho at the time of designation or selection.

(3) The legislature shall enact laws providing for the implementation of the provisions of this section, including terms of commission members, the method of filling vacancies on the commission, additional qualifications for commissioners and additional standards to govern the commission. The legislature shall appropriate funds to enable the commission to carry out its duties.

(4) Within ninety days after the commission has been organized or the necessary census data are available, whichever is later, the commission shall file a proposed plan for apportioning the senate and house of representatives of the legislature with the office of the secretary of state. At the same time, and with same effect, the commission shall prepare and file a plan for congressional districts. Any final action of the commission on a proposed plan shall be approved by a vote of two-thirds of the members of the commission. All deliberations of the commission shall be open to the public.

(5) The legislative districts created by the commission shall be in effect for all elections held after the plan is filed and until a new plan is required and filed, unless amended by court order. The Supreme Court shall have original jurisdiction over actions involving challenges to legislative apportionment.

(6) A member of the commission shall be precluded from serving in either house of the legislature for five years following such member's service on the commission.

Compiler's notes. As originally adopted this section provided as follows:

"§ 2. The senate shall consist of eighteen members and the house of representatives of thirty-six members. The legislature may increase the number of senators and representatives: provided, the number of senators shall never exceed twenty-four, and the house of representatives shall never exceed sixty members. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may from time to time be divided by law."

It was amended as proposed by S. L. 1911, page 788, H. J. R. No. 13, and ratified at the general election in November 1912 to read as follows:

"§ 2. **Membership of house and senate.** — The senate shall consist of one (1) member from each county. The legislature may fix the number of members of the house of representatives at not more than three (3) times as many representatives as there are senators. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may, from time to time, be divided by law."

This section as printed did not correspond with the language appearing in S. L. 1911, p. 788 and S. L. 1913, p. 676, but a check in the secretary of state's office disclosed that the section was incorrectly printed in the acts.

This section was amended as proposed by S. L. 1986, p. 869, H.J.R. No. 4, § 1 and ratified at the general election November 4, 1986, to read as follows:

"§ 2. **Membership of house and senate.** — Following the decennial census of 1990 and in each legislature thereafter, the senate shall consist of not less than thirty nor more than thirty-five members. The legislature may fix the number of members of the house of representatives at not more than two times as many representatives as there are senators. The senators and representatives shall be chosen by the electors of the respective counties or districts into which the state may, from time to time, be divided by law."

This section was amended by S.L. 1993, p. 1530, S.J.R. No. 105, § 1 and ratified at the general election November 8, 1994, to read as it now appears.

Cross ref. Senatorial and representative districts, § 67-202.

Comp. provisions: Wash. Art. 2, § 2.

Wyo. Art. 3, § 3.

Cited in: State v. Whelan, 103 Idaho 651, 651 P.2d 916 (1982); Smith v. Idaho Comm'n on Redistricting, 136 Idaho 542, 38 P.3d 121 (2001).

Apportionment.

Until such time as the legislature has had ample opportunity to fully examine the impact of the 1960 census on the apportionment of representatives throughout this state in the light of article 3, §§ 4 and 5 and this section of the Constitution, the Supreme Court cannot say that the 1951 act is unconstitutional as having failed to grant representative rights of the citizenry of this state afforded by the Constitution. Caesar v. Williams, 84 Idaho 254, 371 P.2d 241 (1962).

The method by which apportionment should be made, aside from the constitutional mandate, is a legislative function; it would be an invasion of the legislative department of government for the Supreme Court to determine the matter of apportionment. Caesar v. Williams, 84 Idaho 254, 371 P.2d 241 (1962).

Opinions of Attorney General. As the legislature undertakes reapportionment, it will want to take a number of steps to ensure its legislative plan stands up in court: First, the overall range of the plan should be less than ten percent; second, the plan should not discriminate against racial or language minorities; third, partisan minorities should not have their vote diluted, thus, the legislature should avoid oddly shaped districts and splintered neighborhoods indicative of gerrymandering; fourth, the legislature should minimize the division of counties into districts not wholly contained within the county and if such counties must be divided, this division should be based on equal population principles or the Voting Rights Act while counties should not be divided to protect parties or incumbents; fifth, the legislature should limit districts to only one senator and two representatives; and sixth, the legislative plan must be completed before the next legislative primaries take place. OAG 91-4.

The state constitution places restrictions on

the reapportionment process in Idaho to the extent that the Idaho Constitution both limits divisions of counties and specifies the number of legislators allotted to each district. OAG 91-4.

§ 3. Term of office. — The senators and representatives shall be elected for the term of two (2) years, from and after the first day of December next following the general election.

Comp. provisions: Ore. Art. 4, § 4.

Utah. Art. 6, §§ 3, 4.

Wash. Art. 2, § 5.

Cited in: *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967); *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

Collateral References. Discussion of this

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 464, 495; Vol. II, p. 1192.

section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 474; Vol. II, p. 1192.

63A Am. Jur. 2d, Public Officers and Employees, § 155.

67 C.J.S., Officers and Public Employees, §§ 66-67.

§ 4. Apportionment of legislature. — The members of the legislature following the decennial census of 1990 and each legislature thereafter shall be apportioned to not less than thirty nor more than thirty-five legislative districts of the state as may be provided by law.

Compiler's notes. As originally enacted this section read:

“§ 4. **Apportionment of legislature.** — The members of the first legislature shall be apportioned to the several legislative districts of the state in proportion to the number of votes polled at the last general election for delegate to congress, and thereafter to be apportioned as may be provided by law: provided, each county shall be entitled to one representative.”

This section was amended as proposed by S. L. 1986, p. 869, H.J.R. No. 4, § 2 and ratified at the general election November 4, 1986, to read as it now appears.

Cross ref. Legislative apportionment, § 67-201 et seq.

Comp. provisions: Cal. Art. 4, § 6.

Mont. Art. 5, § 14.

Ore. Art. 4, § 6.

Wyo. Art. 3, § 3.

ANALYSIS

Apportionment acts.

Legislative function.

Prima facie case of discrimination.

Apportionment Acts.

Act of 1891, p. 195, which, in providing for apportionment of legislature, accorded representation to two counties created by an act subsequently declared to be unconstitutional, and omitted to provide representation for counties from which the two created counties were organized, was unconstitutional. *Ballentine v. Willey*, 3 Idaho 496, 31 P. 994, 95 Am. St. R. 17 (1893).

Act creating new county is not unconstitutional on theory that it deprives electors of new county of representation to which they are entitled by this section, as, in absence of a new apportionment act, electors of new county are entitled to voice in election of senator and representatives of county from which new county was created, and with which it previously constituted a legislative district. *Sabin v. Curtis*, 3 Idaho 662, 32 P. 1130 (1893).

The 1951 amendment to § 67-203 (repealed) allocated one representative per county in compliance with the provisions of this section and then established the further classification of additional representatives on the basis of two for each additional 17,000 population and remaining fraction amounting to 3,000 or more, such legislative plan being within the range of reasonable classification to provide a method by which a fair apportionment would be accomplished. *Caesar v. Williams*, 84 Idaho 254, 371 P.2d 241 (1962).

Legislative Function.

The method by which apportionment should be made, aside from the constitutional mandate, is a legislative function; it would be an invasion of the legislative department of government for the Supreme Court to determine the matter of apportionment. *Caesar v. Williams*, 84 Idaho 254, 371 P.2d 241 (1962).

The apportionment of the legislature is, in the first instance, a matter of legislative discretion and judgment; the courts will not intervene unless a legislatively enacted plan fails to pass constitutional muster. *Hellar v. Cenarrusa*, 106 Idaho 586, 682 P.2d 539 (1984).

Prima Facie Case of Discrimination.

The decisions of the United States Supreme Court have established, as a general matter, that an apportionment plan with a maximum population deviation under ten percent falls within the category of minor deviations; a plan with larger disparities in population, however, creates a prima facie case of discrimination and therefore must be justified by the State. Thus, as applied to chapter 173 of 1984 (now repealed), the conclusion must be that since the population deviation is 32.94 percent (not "under 10%"), the deviation is not in the "minor" category, but to the contrary, creates a prima facie case of discrimination and must be justified by the State. *Hellar v. Cenarrusa*, 106 Idaho 586, 682 P.2d 539 (1984).

Opinions of Attorney General. As the legislature undertakes reapportionment, it will want to take a number of steps to ensure its legislative plan stands up in court: First, the overall range of the plan should be less than ten percent; second, the plan should not discriminate against racial or language minorities; third, partisan minorities should not have their vote diluted, thus, the legislature

should avoid oddly shaped districts and splintered neighborhoods indicative of gerrymandering; fourth, the legislature should minimize the division of counties into districts not wholly contained within the county and if such counties must be divided, this division should be based on equal population principles or the Voting Rights Act while counties should not be divided to protect parties or incumbents; fifth, the legislature should limit districts to only one senator and two representatives; and sixth, the legislative plan must be completed before the next legislative primaries take place. OAG 91-4.

The state constitution places restrictions on the reapportionment process in Idaho to the extent that the Idaho Constitution both limits divisions of counties and specifies the number of legislators allotted to each district. OAG 91-4.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 485; Vol. II, p. 1201.

25 Am. Jur. 2d, Elections, §§ 12-26.

81A C.J.S., States, §§ 62-78.

§ 5. Senatorial and representative districts. — A senatorial or representative district, when more than one county shall constitute the same, shall be composed of contiguous counties, and a county may be divided in creating districts only to the extent it is reasonably determined by statute that counties must be divided to create senatorial and representative districts which comply with the constitution of the United States. A county may be divided into more than one legislative district when districts are wholly contained within a single county. No floterial district shall be created. Multi-member districts may be created in any district composed of more than one county only to the extent that two representatives may be elected from a district from which one senator is elected. The provisions of this section shall apply to any apportionment adopted following the 1990 decennial census.

Compiler's notes. As originally enacted this section read:

"§ 5. **Senatorial and representative districts.** — A senatorial or representative district, when more than one county shall constitute the same, shall be composed of contiguous counties, and no county shall be divided in creating such districts."

An amendment to this section proposed by H.J.R. No. 5 (S.L. 1984, p. 691) was rejected by the voters at the general election of November 6, 1985.

This section was amended as proposed by S. L. 1986, p. 869, H.J.R. No. 4, § 3 and ratified at the general election November 4, 1986, to read as it now appears.

Cited in: *Bingham County v. Idaho*

Comm'n for Reapportionment, 137 Idaho 870, 55 P.3d 863 (2002).

ANALYSIS

Application.
Apportionment acts.
Division of counties.
Equal protection.
Nearly equal population.

Application.

This section applies to an apportionment law and not an act creating new county; and, in any event, such act is not obnoxious to provision where county so created is within same senatorial and representative districts

in which its territory was situated prior to its creation. *Sabin v. Curtis*, 3 Idaho 662, 32 P. 1130 (1893).

Apportionment Acts.

Until such time as the legislature has had ample opportunity to fully examine the impact of the 1960 census on the apportionment of representatives throughout this state in the light of article 3, §§ 2, 4 and this section of the Constitution, the Supreme Court cannot say that the 1951 act is unconstitutional as having failed to grant representative rights of the citizenry of this state afforded by the Constitution. *Caesar v. Williams*, 84 Idaho 254, 371 P.2d 241 (1962).

Division of Counties.

The inclusion of the specific pronoun "such" suggests that the prohibition against division of counties does not extend to all legislative districts, but only to such districts which are composed of "more than one county." *Hellar v. Cenarrusa*, 104 Idaho 858, 664 P.2d 765 (1983).

Chapter 182 of 1982 (now repealed), which reapportioned the Idaho legislature, was unconstitutional as it violated this section which prohibits the division of counties in creating legislative districts. *Hellar v. Cenarrusa*, 106 Idaho 571, 682 P.2d 524 (1984).

Equal Protection.

This section is not necessarily invalidated by the equal protection clause of U.S. Const., 14th Amend., and the decisions of the United States Supreme Court relating to equality of voting. *Hellar v. Cenarrusa*, 104 Idaho 858, 664 P.2d 765 (1983).

Nearly Equal Population.

A state, in apportioning its legislature, must make an honest and good faith effort to construct districts as nearly of equal population as is practicable. *Hellar v. Cenarrusa*, 106 Idaho 586, 682 P.2d 539 (1984).

While it is true that the Idaho Supreme Court stated in dicta in *Hellar v. Cenarrusa*, 106 Idaho 571, 682 P.2d 524 (1984), that a

plan with an assumed population deviation of 41.3 percent would not necessarily be unconstitutional where it was designed to accommodate Idaho's "county-boundary" constitutional requirement and unique State policies and interest, such a supposition would certainly not apply where alternative plans existed which met the same objectives and had below ten percent deviations. It would be unreasonable to assume that the Idaho Supreme Court intended to suggest that the State legislature could ignore federal constitutional case law. *Hellar v. Cenarrusa*, 106 Idaho 586, 682 P.2d 539 (1984).

Opinions of Attorney General. As the legislature undertakes reapportionment, it will want to take a number of steps to ensure its legislative plan stands up in court: First, the overall range of the plan should be less than ten percent; second, the plan should not discriminate against racial or language minorities; third, partisan minorities should not have their vote diluted, thus, the legislature should avoid oddly shaped districts and splintered neighborhoods indicative of gerrymandering; fourth, the legislature should minimize the division of counties into districts not wholly contained within the county and if such counties must be divided, this division should be based on equal population principles or the Voting Rights Act while counties should not be divided to protect parties or incumbents; fifth, the legislature should limit districts to only one senator and two representatives; and sixth, the legislative plan must be completed before the next legislative primaries take place. OAG 91-4.

The state constitution places restrictions on the reapportionment process in Idaho to the extent that the Idaho Constitution both limits divisions of counties and specifies the number of legislators allotted to each district. OAG 91-4.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 505; Vol. II, p. 1211.

§ 6. Qualifications of members. — No person shall be a senator or representative who, at the time of his election, is not a citizen of the United States, and an elector of this state, nor anyone who has not been for one year next preceding his election an elector of the county or district whence he may be chosen.

Comp. provisions: Cal. Art. 4, § 2.
Mont. Art. 5, § 4.
Ore. Art. 4, § 8.
Wash. Art. 2, § 7.
Wyo. Art. 3, § 2.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 506; Vol. II, p. 1211.

§ 7. Privilege from arrest. — Senators and representatives in all cases, except for treason, felony, or breach of the peace, shall be privileged from arrest during the session of the legislature, and in going to and returning from the same, and shall not be liable to any civil process during the session of the legislature, nor during the ten days next before the commencement thereof; nor shall a member, for words uttered in debate in either house, be questioned in any other place.

Comp. provisions: Mont. Art. 5, § 8.

Ore. Art. 4, § 9.

Utah. Art. 6, § 8.

Wash. Art. 2, § 16.

Wyo. Art. 3, § 16.

Ballot language.

This section does not allow the state to question speech and debate by Idaho legislators concerning the calling of a convention for proposing amendments to the United States Constitution. Therefore, imposition of ballot legend on those legislators who did not act in

accordance with instructions in term limits proposition was impermissible. *Simpson v. Cenarrusa*, 130 Idaho 609, 944 P.2d 1372 (1997).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 507; Vol. II, p. 1214.

5 Am. Jur. 2d, Arrest, § 104.

72 Am. Jur. 2d, States, Territories, and Dependencies, § 55.

§ 8. Sessions of legislature. — The sessions of the legislature shall be held annually at the capital of the state, commencing on the second Monday of January of each year, unless a different day shall have been appointed by law, and at other times when convened by the governor.

Compiler's notes. This section was amended by S.L. 1967, p. 1574, H.J.R. No. 1.

Comp. provisions: Utah. Art. 6, §§ 2, 16.

Wash. Art. 2, § 12.

Wyo. Art. 3, § 7.

Cited in: *Goodnight v. Moody*, 3 Idaho 7, 26 P. 121 (1891).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 509, 549, 554; Vol. II, p. 1215.

73 Am. Jur. 2d, Statutes, §§ 35-37.

82 C.J.S., Statutes, § 13.

§ 9. Powers of each house. — Each house when assembled shall choose its own officers; judge of the election, qualifications and returns of its own members, determine its own rules of proceeding, and sit upon its own adjournments; but neither house shall, without the concurrence of the other, adjourn for more than three (3) days, nor to any other place than that in which it may be sitting.

Comp. provisions: Mont. Art. 5, § 10.

Utah. Art. 6, § 10.

Construction.

Provision of this section that each house is to determine its own rules of procedure is not a controlling provision of constitution and is not to be taken literally, but is to be construed in connection with art. 3, § 15. *Cohn v. Kingsley*, 5 Idaho 416, 49 P. 985, 38 L.R.A. 74 (1897).

Each house of the legislature is sole judge of election and qualification of its members. *Burge v. Tibor*, 88 Idaho 149, 397 P.2d 235 (1964).

Together, this section, Const. Art. 3, § 10,

and art. 4, § 13, function to provide a framework for the efficient operation of the Senate. There is no conflict among these constitutional provisions, as neither this section nor Art. 3, § 10 limits, restricts or modifies the authority for the lieutenant governor to vote when the Senate is equally divided as expressly granted in Const. Art. 4, § 13. To hold that the grant of authority to the lieutenant governor to vote when the Senate is equally divided must be repeated in each constitutional section dealing with the authority of the Senate to act, would render the authority conferred in art. 4, § 13 meaningless. *Sweeney v. Otter*, 119 Idaho 135, 804 P.2d 308 (1990).

This section and Const. Art. 3, § 10 and art. 4, § 13 were designed to function together to ensure that the Senate functions efficiently and productively. *Sweeney v. Otter*, 119 Idaho 135, 804 P.2d 308 (1990).

Collateral References. Discussion of this section in constitutional convention. Consti-

tutional Convention Proceedings, Vol. I, p. 519; Vol. II, p. 1215.

72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 43-44.

16 C.J.S., Constitutional Law, § 152.

81A C.J.S., States, §§ 41, 42, 44.

§ 10. Quorum, adjournments and organization. — A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as such house may provide. A quorum being in attendance, if either house fail to effect an organization within the first four (4) days thereafter, the members of the house so failing shall be entitled to no compensation from the end of the said four (4) days until an organization shall have been effected.

Comp. provisions: Utah. Art. 6, § 11.

Construction.

Together, this section, Const. Art. 3, § 9, and Art. 4, § 13, function to provide a framework for the efficient operation of the Senate. There is no conflict among these constitutional provisions, as neither Art. 3, § 9 nor this section limits, restricts or modifies the authority for the lieutenant governor to vote when the Senate is equally divided as expressly granted in Const. Art. 4, § 13. To hold that the grant of authority to the lieutenant governor to vote when the Senate is equally divided must be repeated in each constitutional section dealing with the authority of

the Senate to act, would render the authority conferred in Art. 4, § 13 meaningless. *Sweeney v. Otter*, 119 Idaho 135, 804 P.2d 308 (1990).

Constitution Art. 3, § 9, Art. 4, § 13 and this section were designed to function together to ensure that the Senate functions efficiently and productively. *Sweeney v. Otter*, 119 Idaho 135, 804 P.2d 308 (1990).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 519; Vol. II, p. 1215.

72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 37, 58.

81A C.J.S., States, §§ 41, 50, 51.

§ 11. Expulsion of members. — Each house may, for good cause shown, with the concurrence of two-thirds (⅔) of all the members, expel a member.

Comp. provisions: Mont. Art. 5, § 10.

Ore. Art. 4, § 15.

Utah. Art. 6, § 10.

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 519; Vol. II, p. 1215.

§ 12. Secret sessions prohibited. — The business of each house, and of the committee of the whole shall be transacted openly and not in secret session.

Comp. provisions: Mont. Art. 5, § 10.

Utah. Art. 6, § 15.

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 527; Vol. II, p. 1216, 1269.

§ 13. Journal. — Each house shall keep a journal of its proceedings; and the yeas and nays of the members of either house on any question shall at the request of any three (3) members present, be entered on the journal.

Comp. provisions: Cal. Art. 4, § 7.

Ore. Art. 4, § 13.

Utah. Art. 6, § 14.

Wash. Art. 2, § 11.

Wyo. Art. 3, § 13.

ANALYSIS

Conclusive effect of enrolled bill.

Conclusiveness of journal.

Contents of journal.

Conclusive Effect of Enrolled Bill.

In Idaho a properly enrolled bill is not conclusive of the question of its constitutional passage. In *re* Drainage Dist. No. 1, 26 Idaho 311, 143 P. 299, 1915A L.R.A. (n.s.) 1210 (1914). See also *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

Conclusiveness of Journal.

Court will not go behind journal of legislature to ascertain what is done by that body; journal itself is conclusive, and if incorrectly or improperly made up, it is for legislature and not court to correct same. *Burkhart v. Reed*, 2 Idaho (Hasb.) 503, 22 P. 1 (1889), *aff'd* sub nom., *Clough v. Curtis*, 134 U.S. 361, 10 S. Ct. 573, 33 L. Ed. 945 (1890).

Journal is not only best, but exclusive, evidence of what was done by legislature in passing bills, and absolute verity will be imputed thereto by courts. *Cohn v. Kingsley*, 5 Idaho 416, 49 P. 985, 38 L.R.A. 74 (1897).

Court may go back of enrolled bill and examine journals of respective houses of legislature in order to ascertain whether requirements of constitution were obeyed in passage of act which is questioned. *Cohn v. Kingsley*, 5 Idaho 416, 49 P. 985, 38 L.R.A. 74 (1897); *Swain v. Fritchman*, 21 Idaho 783, 125 P. 319 (1912).

Before court will assume to pass upon constitutionality of enactment of a statute by legislature, it must have before it a copy of

original journals showing whole record of enactment, duly certified by Secretary of State; want of such a journal can not be supplied by stipulation of counsel. *State v. Boise*, 5 Idaho 519, 51 P. 110 (1897).

Contents of Journal.

Failure of journal to show compliance with constitution is conclusive evidence of noncompliance. *Cohn v. Kingsley*, 5 Idaho 416, 49 P. 985, 38 L.R.A. 74 (1897).

Vote on final passage of any bill, or on suspension of provision of Constitution which requires reading of bills on three several days, or on expulsion of member, whether demanded by three members or not, must be by yeas and nays, and entered in journal. *Cohn v. Kingsley*, 5 Idaho 416, 49 P. 985, 38 L.R.A. 74 (1897). (*Sullivan, C. J.*, dissents from these propositions and holds that only such matters as are expressly required by constitution to be entered in journal need be so entered; that yeas and nays vote need not be entered unless requested by three members, and that law is not invalid because of journal's failure to show compliance with constitutional provisions not required to be entered on the journal. This dissenting opinion was upheld in the later case of *In re Drainage Dist. No. 1*, 26 Idaho 311, 143 P. 299, 1915A L.R.A. (n.s.) 1210 (1914).

Unless journal shows affirmatively that legislature has failed to comply with each step required to be taken in passage of act under provisions of constitution, presumption is that legislature did comply with all of such provisions. In *re* Drainage Dist. No. 1, 26 Idaho 311, 143 P. 299, 1915A L.R.A. (n.s.) 1210 (1914).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 527; Vol. II, p. 1227.

82 C.J.S., Statutes, §§ 34, 45.

§ 14. Origin and amendment of bills. — Bills may originate in either house, but may be amended or rejected in the other, except that bills for raising revenue shall originate in the house of representatives.

Comp. provisions: Mont. Art. 5, § 11.

Cited in: *Cohn v. Kingsley*, 5 Idaho 416, 49 P. 985, 38 L.R.A. 74 (1897).

ANALYSIS

Bills for revenue.

Passage of amendments.

Raising issue of constitutionality.

Bills for Revenue.

Purpose of incorporating this article into fundamental law is that enactment of laws for raising revenue is exercise of one of highest prerogatives of government and people have

reserved right to pass upon necessity to that body of legislature which comes most directly from people. *Dumas v. Bryan*, 35 Idaho 557, 207 P. 720 (1922).

Workman's compensation statute is not a revenue act or an act levying a tax within the purview of this section, nor is it a license or excise tax. Applied to clause requiring payment of \$1000 to the state when no claim is made for injury resulting in death of employee. *State ex rel. Parsons v. Workman's Comp. Exch.*, 59 Idaho 256, 81 P.2d 1101 (1938).

To avoid obstructing the legislative process,

this section must be read to require that revenue bills originate in the house, but that the senate can amend such bills. *Worthen v. State*, 96 Idaho 175, 525 P.2d 957 (1974).

Passage of Amendments.

Fact that house amended title to a bill, and then failed to return bill to senate for its concurrence in amendment, but referred same to committee on enrollment, and that it was thereupon presented to governor for his approval, does not render act void, where amendment to title consisted merely in striking out a certain clause applicable to a portion of act which had been left out by senate amendments, afterwards concurred in by house, and which did not appear in act as finally passed. *State v. Doherty*, 3 Idaho 384, 29 P. 855 (1892).

Raising Issue of Constitutionality.

Question of validity of unconstitutional law

or any rights sought to be exercised under it is never waived but may always be raised at any stage of proceedings wherein power conferred or right sought to be exercised is drawn in question. *Dumas v. Bryan*, 35 Idaho 557, 207 P. 720 (1922).

Opinions of Attorney General. Because existing authority interpreting this section of the state Constitution is both sparse and ambiguous, prudence requires that bills potentially affecting general revenues be introduced in the house of representatives. OAG 99-2.

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, p. 528; Vol. II, p. 1227.

73 Am. Jur. 2d, Statutes §§ 53, 54.

82 C.J.S., Statutes §§ 21, 22, 35-34, 36-45.

§ 15. Manner of passing bills. — No law shall be passed except by bill, nor shall any bill be put upon its final passage until the same, with the amendments thereto, shall have been printed for the use of the members; nor shall any bill become a law unless the same shall have been read on three several days in each house previous to the final vote thereon: provided, in case of urgency, two-thirds (⅔) of the house where such bill may be pending may, upon a vote of the yeas and nays, dispense with this provision. On the final passage of all bills, they shall be read at length, section by section, and the vote shall be by yeas and nays upon each bill separately, and shall be entered upon the journal; and no bill shall become a law without the concurrence of a majority of the members present.

Cross ref. Enactment and operation of laws, §§ 67-501 — 67-513.

Comp. provisions: *Utah*. Art. 6, § 22.

Wash. Art. 2, § 22.

Cited in: *Adleman v. Pierce*, 6 Idaho 294, 55 P. 658 (1898); *Jack v. Village of Grangeville*, 9 Idaho 291, 74 P. 969 (1903); *Swain v. Fritchman*, 21 Idaho 783, 125 P. 319 (1912); *Idaho State AFL-CIO v. Leroy*, 110 Idaho 691, 718 P.2d 1129 (1986).

ANALYSIS

Application of urgency proviso.
Constitutional amendments.
Joint resolution.
Journal entries.
Passage of amended bills.
Presentation to governor.
Reading in full.
Territorial laws.

printing the bill, but simply authorizes it to dispense with necessity of taking six days for passage of a bill, and to pass same in one day, in case of urgency requiring such action. *Cohn v. Kingsley*, 5 Idaho 416, 49 P. 985, 38 L.R.A. 74 (1897).

Constitutional provision requiring printing and reading of bills on three several days is mandatory, and such readings can not be dispensed with except in "case of urgency" and then only on an aye and nay vote by two-thirds of house voting with reference to only one bill before it; provision can not be suspended generally. *Cohn v. Kingsley*, 5 Idaho 416, 49 P. 985, 38 L.R.A. 74 (1897).

Courts can not speculate either upon the adequacy of the facts before the legislature or upon the motives of legislators in determining that an urgency exists for emergency legislation. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Constitutional Amendments.

Power of legislature to propose amendments to constitution is not governed by provisions of this section. *Hays v. Hays*, 5 Idaho 154, 47 P. 732 (1897).

Application of Urgency Proviso.

Proviso to this section applies only to last clause of preceding proviso, and it does not authorize legislature to dispense with introduction of a proposed law by bill, or with

Joint Resolution.

Joint resolution, unless enacted in the manner provided for enactment of a law, will have no force or effect as law. *Balderston v. Brady*, 17 Idaho 567, 107 P. 493 (1910); *Hailey v. Huston*, 25 Idaho 165, 136 P. 212 (1913); *Griffith v. Van Deusen*, 31 Idaho 136, 169 P. 929 (1917).

Mere resolution of one branch of legislature providing extra compensation for employees after termination of session is not law. *Griffith v. Van Deusen*, 31 Idaho 136, 169 P. 929 (1917).

Journal Entries.

Where Constitution has expressly required journals to show actions taken, as, for instance, where it requires yeas and nays to be entered, then such entries clearly must appear. *In re Drainage Dist. No. 1*, 26 Idaho 311, 143 P. 299, 1915A L.R.A. (n.s.) 1210 (1914).

Unless journal shows affirmatively that legislature has failed to comply with each step required to be taken in passage of an act under provisions of Constitution, presumption is that legislature did comply with all of such provisions. *In re Drainage Dist. No. 1*, 26 Idaho 311, 143 P. 299, 1915A L.R.A. (n.s.) 1210 (1914).

It can not be contended that there was no compliance with the provisions of this section relative to dispensing with its requirements, on account of a mere typographical error in the House Journal in naming the bill under consideration. *State ex rel. Hall v. Eagleson*, 32 Idaho 280, 181 P. 935 (1919).

Where journals of both house and senate show that bill went through usual course of enactment and was duly signed and approved, it is conclusive on courts that bill was passed according to constitutional requirements. *Dumas v. Bryan*, 35 Idaho 557, 207 P. 720 (1922).

This section requires yeas and nay vote on final passage of bill and that it be entered on journal, but there is no such requirement as to vote on motion for previous question. *Gem Irrigation Dist. v. Gallet*, 43 Idaho 519, 253 P. 128 (1927).

A legislative bill reaching final passage is "entered upon the journal" by making a journal entry of the vote and an identifying reference to the bill without recording it at length and in full on the journal. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

Passage of Amended Bills.

Bill, within contemplation of Constitution, means draft of proposed law and nothing else, and includes all amendments which are incorporated therein up to time of its passage; therefore, amendments, when offered and accepted, must be printed with bill, and whole bill as amended must be read on three several days. *Cohn v. Kingsley*, 5 Idaho 416, 49 P. 985,

38 L.R.A. 74 (1897). (*Sullivan*, C.J., dissents and holds that amendments to a bill need not be read on three several days in each house, as required in case of bills by this section. See *In re Drainage Dist. No. 1*, 26 Idaho 311, 143 P. 299, 1915A L.R.A. (n.s.) 1210 (1914).

Where journal record of a bill shows that it was read first and second time on different days, and after second reading, amendments were adopted, first and second reading of which on different days was dispensed with under Constitution, and amendments were read a first and second time on same day, and printed, and bill as amended was thereafter read at length section by section and yeas and nay vote taken thereon and entered upon journal, it is a compliance with provisions of this section. (*On rehearing*) *Tarr v. Western Loan & Sav. Co.*, 15 Idaho 741, 99 P. 1049, 21 L.R.A. (n.s.) 707 (1908).

Presentation to Governor.

The state legislature can enact no law except by the constitutionally prescribed process, which requires that every bill, before it becomes law, be presented to the governor. *Idaho Power Co. v. State*, 104 Idaho 570, 661 P.2d 736 (1983).

Reading in Full.

Legislature has no power to dispense with final reading of bill, section by section, and an act not read section by section, at least on final reading, is void. *Brown v. Collister*, 5 Idaho 589, 51 P. 417 (1897).

To "read in full" means to read from beginning to end without abridgment or omission, and if the record shows this was done, the bill was read at length, section by section. (*On rehearing*) *Tarr v. Western Loan & Sav. Co.*, 15 Idaho 741, 99 P. 1049, 21 L.R.A. (n.s.) 707 (1908).

Territorial Laws.

This provision has no application to statute which became part of law of state by inclusion by territorial legislature of all laws then in force not in conflict with state Constitution. *Archbold v. Huntington*, 34 Idaho 558, 201 P. 1041 (1921).

Opinions of Attorney General. Despite the presumption in favor of a statute's constitutionality, the provision in § 42-1503 that purports to authorize the legislature to reject, by concurrent resolution, a minimum stream flow approved by the Director of the state Department of Water Resources contravenes Const., Art. 2, § 1, Art. 3, § 1, Art. 4, § 10, and this section. OAG 87-6.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 528; Vol. II, pp. 1227, 1231.

73 Am. Jur. 2d, Statutes, §§ 56-64.

§ 16. Unity of subject and title. — Every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in an act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be embraced in the title.

Comp. provisions: Ore. Art. 4, § 20.

Utah. Art. 6, § 22.

Wash. Art. 2, § 19.

Wyo. Art. 3, § 24.

Cited in: State v. Mulkey, 6 Idaho 617, 59 P. 17 (1899); In re Sharp, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908); Lewis v. Brady, 17 Idaho 251, 104 P. 900, 28 L.R.A. (n.s.) 149 (1909); Gillesby v. Board of Comm'rs, 17 Idaho 586, 107 P. 71 (1910); State v. Martinez, 43 Idaho 180, 250 P. 239 (1926); Stark v. McLaughlin, 45 Idaho 112, 261 P. 244 (1927); Mundell v. Swedlund, 58 Idaho 209, 71 P.2d 434 (1937); Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969); Cenarrusa v. Andrus, 99 Idaho 404, 582 P.2d 1082 (1978); Cheney v. Smith, 108 Idaho 209, 697 P.2d 1223 (Ct. App. 1985).

ANALYSIS

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Amendatory Acts.

Title of an act concerning issuance of bonds to assist any city or village in constructing a free bridge over any navigable stream, set forth the subject, object, or purpose of the act sufficiently. Andrews v. Board of Comm'rs, 7 Idaho 453, 63 P. 592 (1900).

Session Laws 1901, p. 191, title to which was, in substance, "An act to amend certain sections of an act to provide for the organization and government of irrigation districts and to amend certain sections of an act providing for a state engineer," while it covered subjects which had previously been segregated into distinct acts by the legislature, yet related solely to one general subject of irrigation which might have been covered by a

single act, was not repugnant to this section. Pioneer Irrigation Dist. v. Bradbury, 8 Idaho 310, 68 P. 295, 101 Am. St. R. 201 (1902).

Title of act reading, "An act to amend section 1645 of the Revised Statutes of Idaho, as amended by act approved February 16, 1899," was sufficient. State v. Jones, 9 Idaho 693, 75 P. 819 (1904).

Title, "An act to amend section 24 of an act entitled, 'An act to provide for the organization, government and powers of cities and villages, approved February 10, 1899,'" body of act purporting to amend section referred to in title, was sufficient. School Dist. No. 27 v. Twin Falls, 13 Idaho 471, 90 P. 735 (1907).

Where title of an act has been approved by this court, title of an amendatory act thereto is sufficient, when it clearly specifies particular sections of said act to be amended and is germane to subject stated in original act. Settlers' Irrigation Dist. v. Settlers' Canal Co., 14 Idaho 504, 94 P. 829 (1908); Vineyard v. City Council, 15 Idaho 436, 98 P. 422 (1908).

Where title to an amendatory act refers to an educational corporation as an "independent school district" and body of act refers to it as an "independent district," omission of word "school" is an immaterial variance. Howard v. Independent Sch. Dist. No. 1, 17 Idaho 537, 106 P. 692 (1910).

Session Laws 1925, ch. 89, p. 124 (see § 3-415), is not objectionable on ground that no subject is embraced within title as required. Title of act recites it is act amending S.L. 1923, ch. 211, p. 343, enumerating sections amended, and by reference to title of that act, subjects embraced therein and in amendatory act are fully set out. In re Edwards, 45 Idaho 676, 266 P. 665 (1928).

Where provisions of amendatory act are not expressed in title of either amendatory or original act, latter will be held void. Scenic-Better Rds. Hwy. Dist. v. Hay, 48 Idaho 514, 283 P. 41 (1929).

Reference in the title of an amendatory statute to the section numbers of the statutes amended is sufficient compliance with this provision. First Second Bank v. Fremont County, 55 Idaho 76, 37 P.2d 1101 (1934).

Where reference to the statute itself, as well as the title, discloses that no new subject of legislation was introduced and that it was proposed only to amend the statute for the purpose of broadening and extending the powers theretofore granted, the title is sufficient under the rule in this state. State ex rel.

Taylor v. Taylor, 58 Idaho 656, 78 P.2d 125 (1938).

The title of an amendatory act (as distinguished from an original act) is sufficient if it refers by number to the section to be amended provided the title of the original act is sufficient under the rule dealing with the original measures and provided the amendment is germane to the subject of the original act. *Hammond v. Bingham*, 83 Idaho 314, 362 P.2d 1078 (1961).

When the title to an amendatory act proceeds to particularize some but not all of the changes as was done by Acts 1961, ch. 89, the legislation is limited to the matters specified and anything beyond them is void however germane it may be to the subject of the original act. *Hammond v. Bingham*, 83 Idaho 314, 362 P.2d 1078 (1961).

City Charters.

Subject of act of March 9, 1903, amending charter of city of Lewiston, was sufficiently expressed by title: "An act to amend an act entitled, 'An act to amend the charter of the city of Lewiston, approved February 9, 1881,' and to amend an act entitled (designating the several acts affecting and amending the charter of said city) and establishing a new and complete charter or for said city." *Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

Title of former commission government law, S.L. 1911, ch. 82, p. 280, was not objectionable in that it covered cities under special charters in the phrase "providing a form of government for cities of the state now or hereafter having a population of two thousand five hundred or over." *Kessler v. Fritchman*, 21 Idaho 30, 119 P. 692 (1911).

Under this and art. 11, § 2, art. 12, § 1, and art. 21, § 2, the Boise City Charter, which was received from the territorial legislature, is subject to amendment only by a special act of the state legislature specifically referring to the charter, both in the title and in the body of the act. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

General statutes, for example, with respect to collection of municipal taxes, do not amend special charters, and to so hold would render such general statutes obnoxious to this section. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Classification of Crimes.

Idaho Code § 20-223, a parole statute requiring a prisoner to serve one third of his sentence, if convicted of certain named crimes, before he is eligible for parole, does not violate this section since the legislature possesses wide discretion in the classification of crimes. *Standlee v. State*, 96 Idaho 849, 538 P.2d 778 (1975).

Codification of Laws.

After a law has been adopted as a part of entire body of law of state, and incorporated

in code of laws of the state, it is too late to raise the question of sufficiency of title, and requirement of this provision of Constitution has no application. *Anderson v. Great N. Ry.*, 25 Idaho 433, 138 P. 127, 1916C Ann. Cas. 191 (1914); *Curoe v. Spokane & I.E.R.R.*, 32 Idaho 643, 186 P. 1101, 37 A.L.R. 923 (1920); *Emmett Irrigation Dist. v. McNish*, 38 Idaho 241, 220 P. 409 (1923).

This section prohibits the amendment or modification of statutes by codification. *Libby v. Pelham*, 30 Idaho 614, 166 P. 575 (1917); *State v. Purcell*, 39 Idaho 642, 228 P. 796 (1924); *Twin Falls ex rel. Cannon v. Koehler*, 63 Idaho 562, 123 P.2d 715 (1942).

Question of right of legislature to adopt entire code in single bill is one upon which authorities are not uniform. *Session Laws 1919*, ch. 63, p. 197, authorized new compilation of laws of state, but there was no warrant in such statute to change in any way statutes as originally enacted. *State v. Purcell*, 39 Idaho 642, 228 P. 796 (1924).

This provision was not intended to prevent incorporation into single act of entire statutory law upon one general subject. *Boise City v. Baxter*, 41 Idaho 368, 238 P. 1029 (1925), following *Pioneer Irrigation Dist. v. Bradbury*, 8 Idaho 310, 68 P. 295, 101 Am. St. R. 201 (1902).

Where the title of an act is insufficient, but the act is thereafter incorporated in a new code, the act, until effective date of the new code containing it, is not in effect, but becomes effective when the code containing it is adopted. *Federal Reserve Bank v. Citizens' Bank & Trust Co.*, 53 Idaho 316, 23 P.2d 735 (1933).

Where the transaction in question occurred before a new codification of the laws of Idaho was made in which the act was included became effective, the sufficiency of the title of the statute, insofar as concerning the cause of action involved, must be determined as of a time preceding the effective date of the code. *Federal Reserve Bank v. Citizens' Bank & Trust Co.*, 53 Idaho 316, 23 P.2d 735 (1933).

Where a chapter has been codified but the transaction under consideration occurred before the code became effective, the sufficiency of the title to conform to this section is open to question. *Twin Falls Bank & Trust Co. v. Pringle*, 55 Idaho 451, 43 P.2d 515 (1935).

Compilation of laws was not codified by act of governor issuing a proclamation to the effect that the compilation was in full force and effect and should be received as evidence of state law in all courts. *Golconda Lead Mines v. Neill*, 82 Idaho 96, 350 P.2d 221 (1960).

Constitutional Amendments.

It is not essential that subject of a proposed constitutional amendment should be ex-

pressed in its title. A proposed amendment need not have any title except that it should designate article of Constitution to be amended. *Hays v. Hays*, 5 Idaho 154, 47 P. 732 (1897).

It was evidently the intention by this provision to require that propositions which were incongruous, or which did not relate to the same subject-matter or have the same object and purpose, should be considered as separate amendments. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909); *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

The inquiry as to the oneness of the question of subject-matter submitted by a proposed amendment to the Constitution should be determined in the same manner and by the same rule and the same course of reasoning by which the sufficiency of the title of an act of the legislature is determined. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

General Construction.

Generality of title to bill is no objection to it, so long as it is not made to cover legislation incongruous in itself, which, by no fair intentment, can be considered as having necessary or proper connection with it. *Pioneer Irrigation Dist. v. Bradbury*, 8 Idaho 310, 68 P. 295, 101 Am. St. R. 201 (1902); *Shoshone Hwy. Dist. v. Anderson*, 22 Idaho 109, 125 P. 219 (1912).

Courts must give liberal construction to language used by legislature in framing title to any given act which it may pass. *State ex rel. Turner v. Coffin*, 9 Idaho 338, 74 P. 962 (1903); *In re Edwards*, 45 Idaho 676, 266 P. 665 (1928).

One may safely concede that subject of act includes by reasonable inference all those things which will or may facilitate accomplishment thereof; yet, when one, in reading bill with full scope of title in mind, comes upon provisions which could not reasonably have been anticipated, because in no way suggested by title, they are not constitutionally covered thereby. *Jackson v. Gallet*, 39 Idaho 382, 228 P. 1068 (1924).

However numerous provisions of act may be, if, by fair intentment, they can be considered as falling within subject-matter legislated upon in such act or necessary as ends and means to attainment of such subject, act will not be in conflict with constitutional provision. *Boise City v. Baxter*, 41 Idaho 368, 238 P. 1029 (1925), following *Pioneer Irrigation Dist. v. Bradbury*, 8 Idaho 310, 68 P. 295, 101 Am. St. R. 201 (1902).

To constitute duplicity of subject, act must embrace two or more dissimilar and discordant subjects that, by no fair intentment, can be considered as having any legitimate connection or relation with each other. *Boise City v. Baxter*, 41 Idaho 368, 238 P. 1029 (1925).

Word "subject," as used in this section, is to be given broad and extended meaning so as to allow legislature full scope to include in one act all matters having logical or natural connection. *Boise City v. Baxter*, 41 Idaho 368, 238 P. 1029 (1925).

Session Laws 1925, ch. 171, added new section to article 2 of chapter 125 of Idaho Compiled Statutes, but fact that section was designated § 2621A did not justify inference that it was intended to be part of § 2621 (both sections now repealed) and therefore void because not embraced within purview of that section. *State v. Stewart*, 46 Idaho 646, 270 P. 140 (1928).

Courts will not hold a title of an act defective unless the defect is plain and manifest. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

The title of an act should indicate the general scope and purpose of the enactment and be sufficiently comprehensive to give notice of the proposed legislation and it should embrace but one subject and matters properly connected therewith and that subject must be expressed in the title. *State ex rel. Graham v. Enking*, 59 Idaho 321, 82 P.2d 649 (1938).

If an act has but one general subject, object, or purpose and all of its provisions are germane to the general subject and have necessary connection therewith, the act does not militate against the interdiction of this section. *Cole v. Fruitland Canning Ass'n*, 64 Idaho 505, 134 P.2d 603 (1943).

In construing statute the intent of the legislature must be considered, and then it must be determined whether language is sufficient to carry out such intent. *AFL v. Langley*, 66 Idaho 763, 168 P.2d 831 (1946).

To comply with this section, a statute must disclose either by express declaration or clear intentment, or at least portend the common object in order that it may be determined whether all parts are congruous and mutually supporting, and reasonably designed to accomplish common aim. *AFL v. Langley*, 66 Idaho 763, 168 P.2d 831 (1946).

The object of this section is similar to the object of Art. 20, § 2. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

To warrant the nullification of a statute because its subject or object is not expressed in its title, the violation must not only be substantial, but plain, clear, manifest and unmistakable. *Golconda Lead Mines v. Neill*, 82 Idaho 96, 350 P.2d 221 (1960); *State v. O'Bryan*, 96 Idaho 548, 531 P.2d 1193 (1975); *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978).

Legislature is accorded wide discretion in the selection of titles; the language employed should not receive a narrow or technical construction, but should be construed liberally.

Golconda Lead Mines v. Neill, 82 Idaho 96, 350 P.2d 221 (1960).

One may not urge the unconstitutionality of a statute who is not harmfully affected by the particular feature of the statute alleged to be in conflict with the Constitution. *State v. Wendler*, 83 Idaho 213, 360 P.2d 697 (1961).

Legislative Power.

Read together, this section, Const., Art. 2, § 1 and Const., Art. 3, § 1 stand for the proposition that, of the three branches of government, only the legislature has the power to make law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

While rules and regulations enacted by administrative agencies may be given the force and effect of law, they do not rise to the level of statutory law; only the legislature can make law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Partial Invalidity.

A ruling holding void a portion of a chapter not included in the title is not fatal to the portion which is included because of the provision contained in the last clause of this section expressly saving portions embraced in the title. *Twin Falls Bank & Trust Co. v. Pringle*, 55 Idaho 451, 43 P.2d 515 (1935).

In the case of an act containing provisions not expressed in the title, this section operates to render the inexpressed part invalid, but does not invalidate the balance of the act. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

Where an act attempts to create a board, bureau, or commission, but when stripped of its corporate proprietary and unconstitutional powers, it will be a mere embryo skeleton without vitals or substance incapable of administration, the whole act and its attempted to be created board or commission must also fail. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Purpose or Intention.

Intention of this provision was to require a title sufficiently definite and comprehensive to indicate, to one reading it, general scope and purpose of legislation intended by act, and if title be sufficient for that purpose, it will be held to include all necessary and incidental legislation required to make general purpose of act operative. *State ex rel. Turner v. Coffin*, 9 Idaho 338, 74 P. 962 (1903).

Purpose of this constitutional provision is to prevent fraud and deception in enactment of laws, to avoid inconsistent and incongruous legislation, and to reasonably notify legislators and people of legislative intent in enact-

ing a law. *State ex rel. McFarland v. Pioneer Nurseries Co.*, 26 Idaho 332, 143 P. 405 (1914).

Title to an act need not be an index thereof, and if, in its prolixity, it fails to recite every provision, it is not repugnant to constitution where it is sufficiently broad to cover general subject. *Barton v. Alexander*, 27 Idaho 286, 148 P. 471, 1917D Ann. Cas. 729 (1915).

Necessarily, title of an act must be brief. Object of title is to give a general statement of subject-matter. Such a general statement will be sufficient to include all provisions of act having a reasonable connection with subject-matter mentioned and a reasonable tendency to accomplish purpose of act. Object of title is not to state reason for passage of act, or to give an index of its contents. *Ex parte Crane*, 27 Idaho 671, 151 P. 1006, 1918A L.R.A. 942 (1915), aff'd sub nom. *Crane v. Campbell*, 245 U.S. 304, 38 S. Ct. 98, 62 L. Ed. 304 (1917).

Object and purpose of this provision is to prohibit practice of bringing together into one bill subjects diverse in their nature, and having no necessary connection; to prohibit "hodgepodge" or "logrolling" legislation. *State ex rel. Moore v. Banks*, 37 Idaho 27, 215 P. 468 (1923).

Purpose of this provision of Constitution is to prevent deception of legislature or people. *In re Edwards*, 45 Idaho 676, 266 P. 665 (1928).

Object of title is to give general statement of subject-matter, and title of amendatory act is sufficient if in such title attention is called to original act, title of which fully embraces subject-matter of act. *In re Edwards*, 45 Idaho 676, 266 P. 655 (1928).

Title of a legislative act need not be an index thereof but it must be such as to reasonably apprise of what is contained in the body of the act and not be so general as to practically conceal the subject. *Federal Reserve Bank v. Citizens' Bank & Trust Co.*, 53 Idaho 316, 23 P.2d 735 (1933).

The purpose of this provision is to prevent the inclusion of incongruous and unrelated matters in the same measure and to guard against inadvertence, stealth and fraud in legislation. The inclusion of an exemption in an amendment to a statute levying a tax does not violate this section. *First Second Bank v. Fremont County*, 55 Idaho 76, 37 P.2d 1101 (1934).

Title need not be an index to the contents of an act; it is sufficient if it express the subject and all provisions germane and incidental to the subject are covered thereby; provisions not incongruous, and having a proper relation to the subject, may be included in the act without mention in the title. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

The purpose of this provision is to prevent

fraud and deception in the enactment of laws, to prevent log-rolling legislation, to avoid inconsistent and incongruous legislation and to reasonably notify legislators and the people of the legislative intent to be enacted in the law. *State ex rel. Graham v. Enking*, 59 Idaho 321, 82 P.2d 649 (1938).

The title of a statute may be sufficient as an index and clearly indicative of what is included in the statute, yet the statute contain such diverse provisions as to violate the provisions of this section. *AFL v. Langley*, 66 Idaho 763, 168 P.2d 831 (1946).

The object or purpose of this section is to prevent the combining of incongruous matters and objects totally distinct and having no connection nor relation with each other. *Hammond v. Bingham*, 83 Idaho 314, 362 P.2d 1078 (1961).

The purpose of this constitutional provision is to prevent fraud and deception in the enactment of laws and to provide reasonable notice to the legislators and the public of the general intent and subject matter of the act. *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978).

The drafters of the Constitution carefully provided for complete disclosure, within the title, of the contents of a given bill, hoping thereby to avoid hidden effects and to ensure that the members of the legislature would understand the scope of the provisions they were enacting. *Sunshine Mining Co. v. Allendale Mut. Ins. Co.*, 107 Idaho 25, 684 P.2d 1002 (1984).

Raising Issue of Constitutionality.

An employer and surety who relied upon the statute relating to pre-existing infirmities to defeat a recovery of compensation for the aggravation of pre-existing disease were not prejudiced by the fact that the constitutionality of the statute was not raised before the Industrial Accident Board, and the question of constitutionality could be raised by the claimant for the first time on appeal. *Cole v. Fruitland Canning Ass'n*, 64 Idaho 505, 134 P.2d 603 (1943).

Where the title of a bill referred to a section that was mistakenly omitted from copy signed by the governor, the bill was not thereby made unconstitutional. *Worthen v. State*, 96 Idaho 175, 525 P.2d 957 (1974).

Rules and Regulations.

The origin of rule making administrative capacity stems from a delegation from the legislature not a constitutional grant of power to the executive, and such rules or regulations promulgated thereunder are less than the equivalent of statutory law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Rule making that comes from a legislative delegation of power is neither the legal nor functional equivalent of constitutional power;

it is not constitutionally mandated but rather, it comes to the executive department through delegation from the legislature. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Sufficiency of Title.

The title of the legislative act need not serve as a catalog or index to the subject matter of the act, but need only set forth the general subject. *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978).

Territorial Laws.

Constitutionality of statute (§ 19-4115) was challenged on ground that it had never been adopted in manner required by this section. It was held that statutory provision having been passed by territorial legislature prior to adoption of Constitution, provision did not apply, since all territorial laws were continued in force by Constitution itself. *Archbold v. Huntington*, 34 Idaho 558, 201 P. 1041 (1921).

Titles.

—Insufficient.

Title which is delusive or false violates constitutional provision. *State ex rel. Turner v. Coffin*, 9 Idaho 338, 74 P. 962 (1903); *Katz v. Herrick*, 12 Idaho 1, 86 P. 873 (1906); *Jackson v. Gallet*, 39 Idaho 382, 228 P. 1068 (1924).

Act of March 4, 1903 (S.L. 1903, p. 375), title to which was, "An act to provide for the care and keeping of moneys in the custody of the treasurer of the state of Idaho," and general purpose of which was to secure interest on state moneys by depositing same in banks out of custody of treasurer, was void under this section. *State ex rel. Turner v. Coffin*, 9 Idaho 338, 74 P. 962 (1903).

Act entitled, "An act relating to foreign corporations doing business in the state of Idaho," was in violation of this section, where body thereof purports to relieve foreign corporations from the penalties and forfeitures incurred by them in transacting business within the state in violation of law. *Katz v. Herrick*, 12 Idaho 1, 86 P. 873 (1906).

Session Laws 1903, p. 346, title to which purported to prohibit sale of liquor near public works and grading camps, but body of which did not prohibit such sale, but undertook to regulate it, was repugnant to this section. *Gerding v. Board of Comm'rs*, 13 Idaho 444, 90 P. 357 (1907).

Act entitled "An act to provide for the payment of a grazing license fee on sheep entering the state of Idaho from other states and territories, and providing a penalty for the violation thereof," did not disclose that subject of act was the inspection of live stock or had anything to do with the welfare of live stock of the state, and was unconstitutional. *State v. Butterfield Live Stock Co.*, 17 Idaho

441, 106 P. 455, 26 L.R.A. (n.s.) 1224, 134 Am. St. R. 263 (1909).

It is not sufficient to include an increased amount in a general appropriation bill for salary of an officer but such increase of salary is a subject which must be specifically expressed in title of act. *Hailey v. Huston*, 25 Idaho 165, 136 P. 212 (1913).

An act entitled, "An act providing for the apportionment of the legislature," and which purports to provide for such apportionment among all supposed existing counties of the state, can not be sustained after certain counties for which it provided apportionment have been declared nonexistent by Supreme Court, because of unconstitutionality of the law purporting to create them. *Ballentine v. Willey*, 3 Idaho 496, 31 P. 994, 95 Am. St. R. 17 (1921).

Title so general as to practically conceal subject of statute or false or delusive title will be treated as not constitutionally framed. *Jackson v. Gallet*, 39 Idaho 382, 228 P. 1068 (1924).

Requirement that dealers be licensed and that their licenses be revoked for violation of the sales tax law was not embraced within the title of the act and that portion of the act was void. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

—Sufficient.

Session Laws 1903, p. 223 (§ 42-202), providing for appropriation, diversion and adjudication of rights to use of all waters in state running in natural channel of streams, and which contemplates that all such waters are "public waters," private rights therein being simply rights to the use of same and not an ownership in them, is sufficiently indicated by its title, which is: "An act to regulate the appropriation and diversion of the 'public waters' of the state." *Boise City Irrigation & Land Co. v. Stewart*, 10 Idaho 38, 77 P. 25, 77 P. 321 (1904).

Irrigation law of March 9, 1903 (§ 43-101 et seq.), is sufficiently covered by its title, which is: "An act relating to irrigation districts and to provide for the organization thereof, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes, and for other and similar purposes." *Nampa & M. Irrigation Dist. v. Brose*, 11 Idaho 474, 83 P. 499 (1905).

Act 1907, p. 223 (repealed), "to set apart Sunday as a day of rest" and prohibiting doing of certain business on that day, all fully expressed in the title of the act, was held to comply with this section on a common sense construction. *State v. Dolan*, 13 Idaho 693, 92 P. 995, 14 L.R.A. (n.s.) 1259 (1907).

Title of an act, "providing for the organization and government of cities and villages," was sufficiently broad to embrace every sub-

ject-matter incident to administration of city and village government, including designation of offices thereof and how they could be united and filled. *Vineyard v. City Council*, 15 Idaho 436, 98 P. 422 (1908).

Title of the act of 1911, ch. 55, p. 121 (§ 40-1604 et seq.), embraces but one subject, to wit: organization and government of highway districts, and matters germane, connected with, and relating to general subject of organization and government of highway districts, and in no way contravenes the provisions of this section. *Shoshone Hwy. Dist. v. Anderson*, 22 Idaho 109, 125 P. 219 (1912).

That portion of highway commission act (S.L. 1913, ch. 179, § 19, p. 567) which provided for exemption from taxation of motor vehicles did not come within inhibition of this section; such exemption was germane to the general object and plan of act, manifestly connected with it and made for purpose of carrying act into effect. *Achenbach v. Kincaid*, 25 Idaho 768, 140 P. 529 (1914).

Section 13 (since repealed) of the horticultural inspection act (S.L. 1903, p. 347), providing regulations for the shipping of trees, dealt directly and primarily with horticultural matters and comes within purview of general title. *State ex rel. McFarland v. Pioneer Nurseries Co.*, 26 Idaho 332, 143 P. 405 (1914).

Title of an act S.L. 1915, ch. 11, p. 41 (now repealed), "defining prohibition districts and regulating and prohibiting the manufacture, sale, keeping for sale, transportation for sale or gift, and traffic in intoxicating liquors and prohibiting drinking and drunkenness in public places in such prohibition districts, and fixing fines and penalties and repealing 'certain acts,'" is sufficiently broad to include a section prohibiting possession, of intoxicating liquors. *Ex parte Crane*, 27 Idaho 671, 151 P. 1006, 1918A L.R.A. 942 (1915), aff'd sub nom. *Crane v. Campbell*, 245 U.S. 304, 38 S. Ct. 98, 62 L. Ed. 304 (1917).

The purpose of § 9-1206 (repealed), permitting a party to a civil action to call as witness the adverse party and to examine such witness as if under cross-examination, was sufficiently expressed in the title and met the requirements of this section. *Darry v. Cox*, 28 Idaho 519, 155 P. 660 (1916).

Session Laws 1925, ch. 197 (now repealed), "To regulate auto transportation companies," is not in contravention of this constitutional provision. *Smallwood v. Jeter*, 42 Idaho 169, 244 P. 149 (1926).

The bank collection code (repealed) was not deceptive and misleading. It sufficiently conformed to this section by notifying the reader of the part of the act relating to the payment and collection by banks of checks and other like instruments. *Twin Falls Bank & Trust*

Co. v. Pringle, 55 Idaho 451, 43 P.2d 515 (1935).

Sales tax law requiring that dealers be licensed, and that their licenses be revoked for a violation of the law, does not render the act violative of this section as embracing more than one subject. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

The caravan act of 1935 sufficiently expressed its subject in the title. *Geo. B. Wallace, Inc. v. Pfost*, 57 Idaho 279, 65 P.2d 725, 110 A.L.R. 613 (1937).

A statute making an appropriation for the benefit of the unemployment compensation fund, which was to be expended by the industrial accident board, is not void on the ground that the title did not express the subject-matter of the body of the act. *Robison v. Enking*, 58 Idaho 24, 69 P.2d 603 (1937).

The title to the Idaho fruit and vegetable advertising act was sufficient to indicate the general scope and purpose of the statute, it was sufficiently comprehensive to give notice of the proposed legislation, it was not broader in scope than the body of the statute and it was not false, delusive, misleading or deceptive. *State ex rel. Graham v. Enking*, 59 Idaho 321, 82 P.2d 649 (1938).

Statute requiring state auditor to remit to the several counties the pro rata share of each of the excess, if any, over one million dollars already paid to the counties for such year is not ambiguous, indefinite, and uncertain within the meaning of this section, and the provision can be given a workable construction. *Ada County v. Wright*, 60 Idaho 394, 92 P.2d 134 (1939).

An original, independent, legislative act, devoted to the subject of establishing in the department of agriculture a central inspection bureau and setting up rules for the government of the bureau, and providing for the raising of revenue with which to finance the same, which act does not appropriate any funds except funds for the collection of which the act itself provides, does not, by providing for a method of disbursing these funds, go beyond the scope of the title of the act. *Dahl v. Wright*, 65 Idaho 130, 139 P.2d 754 (1943).

Title of legislative act must set forth the general subject, but does not have to set forth an index of the subject matter. *Robbins v. Joint Class A. Sch. Dist. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

Former law which provided for the giving of 10 days' notice of election by trustees of school district did not violate this section on the ground that title did not mention the length of time for notice. *Robbins v. Joint Class A. Sch. Dist. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

To an objection that the narcotic drug act in its title contained no reference to any prohibitions concerning possession of drugs and

therefore the provisions of the act making possession unlawful and subject to penalties were void under the constitutional provision requiring each act to embrace but one subject and matters properly connected therewith, the court held that the words in the title "to regulate the manufacture, sale and distribution of narcotic drugs" were broad enough to embrace possession, possession being a matter not only properly but necessarily connected with the regulation of the manufacture, sale and distribution of narcotics as expressed in the title. *State v. Mayer*, 81 Idaho 111, 338 P.2d 270 (1959).

The contention that the title to S.L. 1957, ch. 81, was void and unconstitutional is without merit as this law is an amendment to a previous act and the title was sufficient as it referred by number to the section being amended and was germane to the subject of the original act. That the amendment also pertained to an exception to the general definition of the "practice of dentistry" is of no consequence, for the legislators were fully advised by the title as to what was to be accomplished. *Berry v. Koehler*, 84 Idaho 170, 369 P.2d 1010 (1962), *aff'd*, 86 Idaho 225, 384 P.2d 484 (1963).

Since the purpose of this section is to prevent fraud and deception in the enactment of laws and to reasonably notify legislatures and people of the intent covered by the law, defendant's argument that the title of legislative act I.C. 37-2737 is void, in that there must be sufficient description in the title in order to make the public aware of what constitutes a crime must fail, for it is the statute itself, not the title, which must make the public aware of what constitutes a crime. *State v. O'Bryan*, 96 Idaho 548, 531 P.2d 1193 (1975).

The title to Laws 1974, ch. 1 (§§ 43-2201 — 43-2207) provides general notice of the subject matter contained in the act and the body of the act is not broader than the title and does not encompass subjects which are not germane to or which are incongruous with the title and thus said act does not violate this section and Idaho Const., art. III, § 18. *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978).

Unity of Subject.

The statute taxing electricity produced for sale and exempting that used for irrigation does not violate this section. It does not contain two subjects, a license tax and a subsidy for irrigation; it levies a tax and creates an exemption properly connected with the subject-matter of the act. *Utah Power & Light Co. v. Pfost*, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

Those portions of acts passed by legislature which are not included or embraced within title of such acts are void. *Cohn v. Kingsley*, 5

Idaho 416, 49 P. 985, 38 L.R.A. 74 (1897).

If two separate bills are passed by legislature on same general subject, and differently worded titles, said acts may be amended by one bill, with a proper title; but if title contains two distinct subjects, and both subjects are legislated upon in body of act, act is absolutely void. *Pioneer Irrigation Dist. v. Bradbury*, 8 Idaho 310, 68 P. 295, 101 Am. St. R. 201 (1902).

Objection should be grave, and conflict between constitution and statute palpable, before judiciary should hold a legislative enactment unconstitutional upon sole ground that it embraces more than one subject. *Pioneer Irrigation Dist. v. Bradbury*, 8 Idaho 310, 68 P. 295, 101 Am. St. R. 201 (1902).

If title of act indicates and act itself actually embraces two or more subjects diverse in their nature, and having no necessary connection, such act is unconstitutional and void. *Pioneer Irrigation Dist. v. Bradbury*, 8 Idaho 310, 68 P. 295, 101 Am. St. R. 201 (1902); *Boise City v. Baxter*, 41 Idaho 368, 238 P. 1029 (1925).

If provisions of act all relate directly or indirectly to same subject, having natural connection therewith, and are not foreign to subject expressed in title, they may be united in one act. *Pioneer Irrigation Dist. v. Bradbury*, 8 Idaho 310, 68 P. 295, 101 Am. St. R. 201 (1902); *Boise City v. Baxter*, 41 Idaho 368, 238 P. 1029 (1925).

General appropriation act includes one subject and an increase in salary of an officer is another and distinct subject and they can not be combined in one act. *Hailey v. Huston*, 25 Idaho 165, 136 P. 212 (1913).

Every act passed by legislature must embrace but one subject and matters properly connected therewith, which subject shall be expressed in title. *State ex rel. Allebaugh v. Gallet*, 36 Idaho 178, 209 P. 723 (1922); *Hailey v. Huston*, 25 Idaho 165, 136 P. 212 (1913).

This section positively prohibits embracing in same act more than one subject and matters properly connected therewith, and where this is done, act is absolutely void. *State ex rel. Moore v. Banks*, 37 Idaho 27, 215 P. 468 (1923).

Where statute embraces two distinct subjects and one appropriation is made to carry both into effect without indicating what proportionate share was intended for each purpose, entire act must fail. *State ex rel. Moore v. Banks*, 37 Idaho 27, 215 P. 468 (1923).

Session Laws 1923, ch. 211, p. 343 (see §§ 3-401—3-420) was held in violation of Constitution, as §§ 9, 10 in that act purported to appropriate state moneys, while title to act was to contrary. *Jackson v. Gallet*, 39 Idaho 382, 228 P. 1068 (1924) (Session Laws 1925, ch. 90, p. 128, amends and corrects original act in this respect. In re

Edwards, 45 Idaho 676, 266 P. 665 (1928)).

Single act may embrace many subjects and not be duplicitous, if they pertain to matters that are properly connected with subject of act. *Boise City v. Baxter*, 41 Idaho 368, 238 P. 1029 (1925).

Statute imposing license on autos and auto trailers does not embrace more than one subject. *Garrett Transf. & Storage Co. v. Pfost*, 54 Idaho 576, 33 P.2d 743 (1933).

A statute authorizing state public works commissioner to cooperate with the federal government does not violate this provision as embracing more than one subject. *State ex rel. Taylor v. Taylor*, 58 Idaho 656, 78 P.2d 125 (1933).

Title of statute imposing license on occupation sufficiently states the subject as a license tax on the business of mining, the basis of determining the tax, time of payment, distribution, and how collected. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

The title to the toll-bridge acquisition law is not insufficient, ambiguous or misleading and it embraces only one subject properly expressed therein. All that is required is that the subject be expressed in the title and that the contents be germane to the purposes recited. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

This section must be construed reasonably, and it is sufficiently in compliance therewith if the act treats of but one general subject which is expressed in a general title, and the title need not specifically mention subdivision of the subject, and each of the ends and means necessary for the accomplishment of the object of the act. *Cole v. Fruitland Canning Ass'n*, 64 Idaho 505, 134 P.2d 603 (1943).

In determining the unity of the subject of a statute, the general object and purpose sought to be attained by the legislature must be disclosed and legitimate. *AFL v. Langley*, 66 Idaho 763, 168 P.2d 831 (1946).

A statute must indicate a common object, and all parts of statute must relate to and tend to support and accomplish the indicated object. *AFL v. Langley*, 66 Idaho 763, 168 P.2d 831 (1946).

Workman's Compensation Act.

This section does not apply to the provision of the workman's compensation law requiring employer to pay \$1000 to the state where no claim is made for injury resulting in death of employee. *State ex rel. Parsons v. Workmen's Comp. Exch.*, 59 Idaho 256, 81 P.2d 1101 (1938).

Title to amendatory statute reciting that the statute would amend the workman's compensation law by adding a new section concerning additional injuries to infirm or previously disabled workmen sufficiently

embraced the subject of the statute, which provided that if the degree or duration of disability resulting from accident was increased or prolonged because of preexisting injury or infirmity, the employer should be liable only for the additional disability, sufficiently complies with this section. *Cole v. Fruitland Canning Ass'n*, 64 Idaho 505, 134 P.2d 603 (1943).

Opinions of Attorney General. Because of lack of unity of subject and title, S.L. 1984,

ch. 35, § 2 did not effectively repeal subdivision (a)(1) of § 63-3022 as it failed to conform with this section. OAG 84-10 (decision prior to 1987 amendment).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 529, 531; Vol. II, p. 1227.

73 Am. Jur.2d, Statutes, §§ 91-126.

82 C.J.S., Statutes, §§ 64-68, 217-220.

§ 17. Technical terms to be avoided. — Every act or joint resolution shall be plainly worded, avoiding as far as practicable the use of technical terms.

Comp. provisions: Ore. Art. 4, § 21.

Cited in: *In re Sharp*, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908); *Boise City v. Baxter*, 41 Idaho 368, 238 P. 1029 (1925); *Burns v. Lukens*, 46 Idaho 603, 269 P. 596 (1928); *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940); *McLean v. Hecla Mining Co.*, 62 Idaho 75, 108 P.2d 299 (1940); *State v. Newman*, 108 Idaho 5, 696 P.2d 856 (1985).

ANALYSIS

Statute plainly worded.

Vagueness.

Word inadvertently used.

Statute Plainly Worded.

A statute providing for appropriation of certain moneys from the state highway fund to counties and fixing a basis for the computation was held not to offend against this section, requiring every act to be plainly worded. *Ada County v. Wright*, 60 Idaho 394, 92 P.2d 134 (1939).

Vagueness.

Since statutory standard for determining when loan may be approved is laid in subsection (c) of § 42-1756 and is applicable to all types of applicants, §§ 42-1754 and 42-1756 permitting water resources board to make loans from revolving development fund for irrigation projects in special cases were not

void for vagueness on the ground that the words "special cases" constituted the statutory criteria for determining when a loan was to be granted to an individual. *Nelson v. Marshall*, 94 Idaho 726, 497 P.2d 47 (1972).

Where dispute over legality of loan by water resources board remained to be settled, there was no demonstration that the loans would not be made in future, part of the statute authorizing loans to "special cases" was held unconstitutional by the trial court, and the constitutionality of the statute and the loans made thereunder were challenged on appeal, the appeal was not dismissed as moot. *Nelson v. Marshall*, 94 Idaho 726, 497 P.2d 47 (1972).

Word Inadvertently Used.

Act is not repugnant to Constitution where word is used therein which it is apparent legislature did not intend to use, and, as used, is meaningless and surplusage, and it is plain that same was inadvertently used. *Settlers' Irrigation Dist. v. Settlers' Canal Co.*, 14 Idaho 504, 94 P. 829 (1908).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 529; Vol. II, p. 1227.

73 Am. Jur. 2d, Statutes, § 238.

82 C.J.S., Statutes, §§ 66, 330.

§ 18. Amendments to be published in full. — No act shall be revised or amended by mere reference to its title, but the section as amended shall be set forth and published at full length.

Comp. provisions: Ore. Art. 4, § 22.

Wash. Art. 2, § 37.

Wyo. Art. 3, § 26.

Cited in: *Green v. State Bd. of Canvassers*, 5 Idaho 130, 47 P. 259, 95 Am. St. R. 169 (1896); *Hailey v. Huston*, 25 Idaho 165, 136 P. 212 (1913); *State ex rel. Allebaugh v. Gallet*, 36 Idaho 178, 209 P. 723 (1922).

ANALYSIS

Adopting law of another jurisdiction.

Amendatory act.

Amendment by adding new section.

Amendment by implication.

Application to repeals.

Constitutional amendments.

Construction in general.

Nonamendatory act.

Object of section.

Reciting amendatory acts.

Setting out amendments.

Sufficiency of title.

Adopting Law of Another Jurisdiction.

In view of this constitutional provision it would seem somewhat anomalous if the legislature could adopt the law of another state by reference. *Carroll v. Hartford Fire Ins. Co.*, 28 Idaho 466, 154 P. 985 (1916).

This provision does not prohibit the adoption of an act of Congress by reference. *Brady v. Place*, 41 Idaho 747, 242 P. 314 (1925).

Amendatory Act.

If the legislature enacts the amending bill, and the amending bill is complete in itself, there is an expression of legislative intent, and the defects in the prior statute are remedied by the proper enactment of the amending statute. *Valente v. Mills*, 93 Idaho 212, 458 P.2d 84 (1969).

Amendment by Adding New Section.

Section of statute may be amended by adding thereto a new section, providing section added relates to and is germane to subject-matter of the act proposed to be amended. *Settlers' Irrigation Dist. v. Settlers' Canal Co.*, 14 Idaho 504, 94 P. 829 (1908).

Amendment by Implication.

Two or more laws relating to same subject, or to different parts of same subject, are not necessarily amendatory to each other, within meaning of this section, although they may be construed in *pari materia*. *Noble v. Bragaw*, 12 Idaho 265, 85 P. 903 (1906).

Amendments by implication are not prohibited, and such do not require reference to amended section. *Standrod v. Case*, 24 Idaho 365, 133 P. 651 (1913).

Application to Repeals.

Where a later act covers the whole subject of an earlier one, and, in addition thereto, contains new provisions, this is evidence of the intention on the part of the lawmakers not only to substitute the latter act for the earlier one, but to cover the whole subject, and would operate as a repeal of all former statutes relating to such subject-matter. *People ex rel. Springer v. Lytle*, 1 Idaho 143 (1867).

Where two legislative acts are so repugnant and conflicting with each other that the two can not possibly stand, the last will operate as superseding or repealing the earlier one. *People ex rel. Springer v. Lytle*, 1 Idaho 143 (1867).

This section has no application to repeals either express or implied, but only to revisions and amendments. *Noble v. Bragaw*, 12 Idaho 265, 85 P. 903 (1906).

Where the act evidenced the legislative

intent to repeal existing law and not to merely amend, there was no requirement that the existing law be published at length and accordingly there was no constitutional violation. *Golconda Lead Mines v. Neill*, 82 Idaho 96, 350 P.2d 221 (1960).

Constitutional Amendments.

Method of amending statutes does not govern amendments to Constitution. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908).

Construction in General.

Session Laws 1905, p. 39, § 39, which repeals such sections of sheep inspection law of 1901 as create office of sheep inspector and deputy sheep inspectors, but continues in force the remainder of act of 1901, and requires the state veterinary surgeon and live stock inspector and deputy sheep inspectors, and requires the state inspectors provided for in said act of 1905, to perform duties imposed on sheep inspector and his deputies by act of 1901 is not in violation of this section. *Noble v. Bragaw*, 12 Idaho 265, 85 P. 903 (1906).

Where section of code is said in title of bill to be amended, but such section has at the time no existence, it is immaterial that such section is not set forth at length, and this section of Constitution has no application. *Achenbach v. Kincaid*, 25 Idaho 768, 140 P. 529 (1914).

Adoption as part of commission form of government of general eminent domain act by reference to all general laws of state pertaining to cities and making such laws part of commission form of government act is not violation of this provision of Constitution. *Boise City v. Baxter*, 41 Idaho 368, 238 P. 1029 (1925).

If a statute as amended is sufficiently definite to enable a court to place thereon a reasonable construction and declare the legislative intent, then such a statute is not so ambiguous as to be unconstitutional for uncertainty. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

The legislature, in enacting amendments to existing statutes, must have intended to clarify, strengthen, or make some change in the existing statutes. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

Nonamendatory Act.

Session Laws 1974, ch. 1 (§§ 43-2201 — 43-2207) was not an amendment or revision of an "act" or "section" within the meaning of this section, but was an entirely new and independent addition to Title 43 and thus was not enacted in violation of this section. *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978).

Object of Section.

Object of this provision is to prevent obscurity, confusion, and uncertainty in law. It

deals with such amendments as change application, force, or effect of an act. Act of the first state legislature changing words "territory" to "state" and "comptroller" to "auditor" is not repugnant to this section. *Gilbert v. Moody*, 3 Idaho 3, 25 P. 1092 (1891).

Reciting Amendatory Acts.

An amended section of an act takes the place of original section in act amended, and failure of legislature, in amending same section of original act a second time, to specifically refer to it as having been amended by first amendatory act, does not affect the validity or constitutionality of the second amendment of amended section. *I.A. West & Co. v. Board of Comm'rs*, 14 Idaho 353, 94 P. 445 (1908). But see *Achenbach v. Kincaid*, 25 Idaho 768, 140 P. 529 (1914), where it said that technically a section of the code had no existence in 1913 because it was amended in 1911.

Setting Out Amendments.

Whole act containing section amended need not be republished in full, but only section amended need be republished. *Noble v.*

Bragaw, 12 Idaho 265, 85 P. 903 (1906).

This section does not require whole chapter, of which amended section is part, to be set forth at full length, but requires only section amended to be set out, although, standing alone, amended section is not sufficient to indicate its purpose. *State v. Jones*, 9 Idaho 693, 75 P. 819 (1914).

Sufficiency of Title.

If the title of the original act is sufficient to embrace the matters contained in the amendatory act, the sufficiency of the title of the amendatory act is unimportant. The title is sufficient provided it refers to the section or sections naming the title of the act amended, and the subject-matter of the amendatory act is embraced within the scope of the title of the original act. *Vineyard v. City Council*, 15 Idaho 436, 98 P. 422 (1908).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 530, 534; Vol. II, p. 1227.

73 Am. Jur. 2d, Statutes, §§ 57, 58.

82 C.J.S., Statutes, §§ 29-34.

§ 19. Local and special laws prohibited. — The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

Regulating the jurisdiction and duties of justices of the peace and constables.

For the punishment of crimes and misdemeanors.

Regulating the practice of the courts of justice.

Providing for a change of venue in civil or criminal actions.

Granting divorces.

Changing the names of persons or places.

Authorizing the laying out, opening, altering, maintaining, working on, or vacating roads, highways, streets, alleys, town plats, parks, cemeteries, or any public grounds not owned by the state.

Summoning and impaneling grand and trial juries, and providing for their compensation.

Regulating county and township business, or the election of county and township officers.

For the assessment and collection of taxes.

Providing for and conducting elections, or designating the place of voting.

Affecting estates of deceased persons, minors, or other persons under legal disabilities.

Extending the time for collection of taxes.

Giving effect to invalid deeds, leases or other instruments.

Refunding money paid into the state treasury.

Releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any person or corporation in this state, or any municipal corporation therein.

Declaring any person of age, or authorizing any minor to sell, lease or incumber his or her property.

Legalizing as against the state the unauthorized or invalid act of any officer.

Exempting property from taxation.

Changing county seats, unless the law authorizing the change shall require that two-thirds ($\frac{2}{3}$) of the legal votes cast at a general or special election shall designate the place to which the county seat shall be changed; provided, that the power to pass a special law shall cease as long as the legislature shall provide for such change by general law; provided further, that no special law shall be passed for any one county oftener than once in six (6) years.

Restoring to citizenship persons convicted of infamous crimes.

Regulating the interest on money.

Authorizing the creation, extension or impairing of liens.

Chartering or licensing ferries, bridges or roads.

Remitting fines, penalties or forfeitures.

Providing for the management of common schools.

Creating offices or prescribing the powers and duties of officers in counties, cities, townships, election districts, or school districts, except as in this constitution otherwise provided.

Changing the law of descent or succession.

Authorizing the adoption or legitimization of children.

For limitation of civil or criminal actions.

Creating any corporation.

Creating, increasing or decreasing fees, percentages, or allowances of public officers during the term for which said officers are elected or appointed.

Comp. provisions: Cal. Art. 4, § 16.

Mont. Art. 5, § 12.

Ore. Art. 4, § 23.

Utah. Art. 6, § 26.

Wash. Art. 2, § 28.

Wyo. Art. 3, § 27.

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Cities and towns.

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Corporations.

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Public health districts.

Regulating weight of vehicles.

School district annexation.

State parks.

Sunday closing.

Taxation.

Worker's compensation.

Cited in: *Wiggin v. City of Lewiston*, 8 Idaho 527, 69 P. 286 (1902); *Gillesby v. Board of Comm'rs*, 17 Idaho 586, 107 P. 71 (1910); *Thomas v. Boise City*, 25 Idaho 522, 138 P. 1110 (1914); *Achenbach v. Kincaid*, 25 Idaho 768, 140 P. 529 (1914); *Burns v. Lukens*, 46 Idaho 603, 269 P. 596 (1928); *Federal Reserve Bank v. Citizens' Bank & Trust Co.*, 53 Idaho 316, 23 P.2d 735 (1933); *Twin Falls Canal Co. v. Huff*, 58 Idaho 587, 76 P.2d 923 (1938); *O'Malley v. Parsons*, 59 Idaho 735, 85 P.2d 739 (1939); *Eberle v. Nielson*, 78 Idaho 572, 306 P.2d 1083 (1957); *R.E.W. Constr. Co. v. District Court*, 88 Idaho 426, 400 P.2d 390 (1965); *Haeg v. City of Pocatello*, 98 Idaho 315, 563 P.2d 39 (1977); *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978); *Westerberg v. Andrus*, 114 Idaho 401, 757 P.2d 664 (1988).

Cities and Towns.

Commission form of government act for cities is not special or class legislation and is not in violation of this section. *Kessler v. Fritchman*, 21 Idaho 30, 119 P. 692 (1911).

Since cities discontinuing commission form of government return to their old status without any new incorporation or establishment of any new entity, such action is not in conflict with this provision. *Meier v. City Council*, 43 Idaho 693, 254 P. 221 (1927).

Construction in General.

This section prohibits enactment of local or special laws on subjects therein enumerated, but leaves legislature master of its own discretion in passing special laws on subjects not prohibited by Constitution. *Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

As long as act extends same privileges to all belonging to same class and there is no discrimination, and provisions give all persons belonging to same class an equal opportunity, it is not in effect local or special. *Gillesby v. Board of Comm'rs*, 17 Idaho 586, 107 P. 71 (1910).

Statute is general if its terms apply to, and its provisions operate upon, all persons and subjects in like situation. *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915).

Local or special laws are such as apply to one individual, to individuals out of a single class similarly situated or to a special locality. *Ada County v. Wright*, 60 Idaho 394, 92 P.2d 134 (1939).

Where an act offends a constitutional provision, the Supreme Court, upon so determining, will not consider other constitutional objections raised. *Peck v. State*, 63 Idaho 375, 120 P.2d 820 (1941).

A law is not special simply because it may have only a local application or apply only to a special class, if, in fact, it does apply to all such classes and all similar localities and to all belonging to the specified class to which the law is made applicable. *State ex rel. Nielson v. Lindstrom*, 68 Idaho 226, 191 P.2d 1009 (1948); *School Dist. No. 25 v. State Tax Comm'n*, 101 Idaho 283, 612 P.2d 126 (1980).

Amendments of 1949 and 1951 to former § 33-522 (Acts 1947, ch. 111, § 22, p. 228) did not violate Const., art. 3, § 19, since amendments affected all organized districts where attendance units were in operation. *Robbins v. Joint Class A. Sch. Dist. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

This section was not violated by ch. 116, 1967 Session Laws, as amended by ch. 377, 1967 Session Laws (§§ 63-105R, 63-105Y, 63-105Z); exempting agricultural crops from ad valorem taxation; defining business inventory; exempting same from ad valorem taxation by increasing exemptions in steps over a four-year period from partial to whole exemp-

tions; providing for transfer of funds from the sales tax fund to all counties in the state for distribution to all taxing districts in the counties, to be applied in the same manner and in the same proportions as revenues from ad valorem taxation; and providing formulas for determining percentages of sales tax fund to go to all counties and taxing districts in counties. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

The test of whether a classification is local or special is whether the classification is arbitrary, capricious or unreasonable. *Sun Valley Co. v. City of Sun Valley*, 109 Idaho 424, 708 P.2d 147 (1985).

Corporations.

Special statute which, in effect, creates corporation is unconstitutional. *Jackson v. Gallet*, 39 Idaho 382, 228 P. 1068 (1924).

Session Laws 1925, ch. 89, 90, pp. 124, 128 (see §§ 3-401 — 3-420), amending S.L. 1923, ch. 211, p. 343, is not unconstitutional as creating corporation by special act. In re *Edwards*, 45 Idaho 676, 266 P. 665 (1928).

The legislature is empowered to create a board, commission, bureau, or department, such as a State Water Conservation Board, attempted to be created by Session Laws 1935 (1st E.S.), ch. 60 (unconstitutional), and arm it with administration and governmental powers, such as power to make surveys and investigations as to water supply, waste and loss, and methods of conservation, but this is the extent of the power to so create. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 S.W.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

The state insurance fund is not a corporation within the meaning of this section of the constitution forbidding special laws creating any corporation nor within the meaning of art. 11, § 2 against the granting of a charter by special law. *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

The Health Facilities Authority created pursuant to § 39-1441 is not a corporation within the meaning of this section or art. 11, § 2, since the Authority cannot change its own structure, is under public control and is restricted to a narrow range of permissible public goals. *Board of County Comm'rs v. Idaho Health Facilities Auth.*, 96 Idaho 498, 531 P.2d 588 (1975).

The water resource board is not a corporation within the meaning of this section or art. 11, § 2 since it cannot change its own structure, is under public control, and is restricted to a narrow range of permissible public goals. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Counties.

Legislature, in creating new county, may provide for appointment by governor of county officers to hold office until first biennial election after creation of county. *Sabin v. Curtis*, 3 Idaho 662, 32 P. 1130 (1893).

Act creating new county, and apportioning indebtedness of original county and new county, does not violate requirement of this section which prohibits legislature from framing local laws regulating county and township business. *Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894), overruled on other grounds, *Veatch v. City of Moscow*, 18 Idaho 313, 109 P. 722 (1910).

This section does not apply to location of a permanent county seat upon organization of a new county, but does apply to removal of a county seat. *Leach v. Nez Perce*, 24 Idaho 322, 133 P. 926 (1913).

Act providing for refunding bonds in new counties (S.L. 1915, ch. 20, p. 71) does not contravene this section, classification being reasonable. *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915).

Crimes.

Act of 1897 prohibiting gambling, if construed so as to make an act lawful in one part of state which is, in another part, made a misdemeanor, would be a local or special law and unconstitutional. In re *Ridenbaugh*, 5 Idaho 371, 49 P. 12 (1897).

The Prohibition law (now repealed) was of general application and did not contravene this section, even though an act might be a crime in a prohibition district when not a crime in wet territory. *Ex parte Crane*, 27 Idaho 671, 151 P. 1006, 1918A L.R.A. 942 (1915), *aff'd sub nom. Crane v. Campbell*, 245 U.S. 304, 38 S. Ct. 98, 62 L. Ed. 304 (1917).

Statute defining embezzlement from banks and applying to all persons following occupation of banking is not class legislation as singling out bankers as particular class. *Ex parte Bottjer*, 45 Idaho 168, 260 P. 1095 (1927).

The amendment of city charter fixing a penalty different from the general law as to unchartered cities does not violate this section. *State v. Romich*, 67 Idaho 229, 176 P.2d 204 (1946).

Elections.

Local option law (S.L. 1909, p. 9) did not violate this section. Vesting election registrars with discretionary power to fix days for special election, in addition to those fixed by general statute for receiving applications for registration is not a local or special law. *Gillesby v. Board of Comm'rs*, 17 Idaho 586, 107 P. 71 (1910).

Existing Special Charters.

All limitations upon legislature in regard to special legislation are found in this section.

We have no provision such as is found in constitutions of some other states, to the effect that no special laws shall be passed where general laws can be made applicable. It follows, therefore, that special charters may be amended by special laws to meet requirements of growing cities, but can not be amended by general laws. *Boise City Nat'l Bank v. Boise City*, 15 Idaho 792, 100 P. 93 (1908).

Legislature may amend by special law charter of a preexisting city so long as amendments are germane with objects of charter (*Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905)), and same is true of a specially chartered school district. *Howard v. Independent Sch. Dist. No. 1*, 17 Idaho 537, 106 P. 692 (1910).

Where Boise City's charter provided that city taxes should be levied by the Mayor and council and assessed by the city assessor, collected by the city tax collector, the state legislature is not inhibited from transferring these duties to the county officers of Ada County, but such county officers, in the discharge of such duties, merely act as agents for the city. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

The interdiction of special acts by this section does not apply to the amendment of special municipal charters existent prior to the adoption of the constitution. *State v. Romich*, 67 Idaho 229, 176 P.2d 204 (1946).

Fees and Salaries of Public Officers.

This section applies only to irregular and uncertain modes of compensating public servants, as by "fees, percentages or allowances," and not to the salaries of officers such as the county commissioners. *Blaine County ex rel. Matthaei v. Pyrah*, 32 Idaho 111, 178 P. 702 (1919).

Prohibition against "creating, increasing or decreasing fees, percentages or allowances of public officers," etc., does not apply to regular salaries of officers. *Blaine County ex rel. Matthaei v. Pyrah*, 32 Idaho 111, 178 P. 702 (1919).

Legislature has power to diminish salaries of county commissioners during their terms of office, and an act passed for that purpose does not conflict with this article. *Blaine County ex rel. Matthaei v. Pyrah*, 32 Idaho 111, 178 P. 702 (1919).

An appropriation to pay members of the legislature their expenses offends against this section, as an increase of fees during their term of office. Such appropriation would constitute a special law. *Peck v. State*, 63 Idaho 375, 120 P.2d 820 (1941).

Highways and Streets.

While word "highway" in its broadest sense would include navigable rivers and lakes, framers of constitution did not use term in

any such broad and extensive sense. That word in its ordinary and popular sense refers to ordinary roads and highways which are under care of local authorities, and term as used in this section has reference to highways opening through country upon lands for travel of public generally. *Grice v. Clearwater Timber Co.*, 20 Idaho 70, 117 P. 112 (1911).

Word "highways" as used in this section does not include railroads. The legislature never intended to include railroads in the term "public highway" so as to require them to pay the excise gasoline tax. *Oregon S.L.R.R. v. Pfost*, 53 Idaho 559, 27 P.2d 877 (1933).

The statute authorizing state auditor to apportion auto licenses to the several counties is not a local or special law. Its application is general and uniform; it applies to all counties, highway and road districts alike. Special laws apply to an individual or individuals out of a single class similarly situated or to a special locality. *Ada County v. Wright*, 60 Idaho 394, 92 P.2d 134 (1939).

The statute relating to the acquisition of toll bridges, creating a toll-bridge company and prescribing its duties did not constitute local or special legislation within the meaning of this section. *Lyons v. Bottolfson*, 61 Idaho 281, 101 P.2d 1 (1940).

Session Laws 1957, ch. 295 providing for an appropriation from the highway fund to the county treasurer of Lemhi County to be used for the construction and repair of Williams Creek Road, a county roadway violates paragraph 7 of this section as being a special law applying only to a special locality. *Board of County Comm'rs v. Swensen*, 80 Idaho 198, 327 P.2d 361 (1958).

Interest on Money.

There is no provision in the state or federal constitutions which in any way limits the power of legislature in making a classification of persons or corporations writing insurance within state of Idaho, and placing in a separate class those persons or corporations who loan money upon policies written, and limit charge to be made for use of such loans to five per cent, although such statute makes no limitation of rate of interest to be charged upon money loaned upon other securities, except general statute of state regulating rate of interest. *Continental Life Ins. & Inv. Co. v. Hattabaugh*, 21 Idaho 285, 121 P. 81 (1912).

Legalizing Acts of Officers.

Curative acts, validating contracts of commissioner of public works for construction, improvement and repair of highways into and through cities do not legalize any act, illegal or otherwise, of any officer against the state, and, being general in character applicable to all like situations, are not local or special laws enacted in violation of this section. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

If a claim were originally incurred in violation of § 59-1015 and Const., art. 7, § 13, any subsequent attempt of the legislature to pay it would violate this provision. *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

Legislative Classifications.

Where there are valid differences supporting the legislative classification as between architects and builders on the one hand and owners, occupiers and material suppliers on the other, the various classes are not similarly situated and § 5-241 does not violate this section. *Twin Falls Clinic & Hosp. Bldg. Corp. v. Hamill*, 103 Idaho 19, 644 P.2d 341 (1982).

Limitations on Damages.

Because the state has a legitimate interest in protecting the availability of liability insurance for its citizens, and § 6-1603 is neither an arbitrary, capricious, nor unreasonable method for addressing this legitimate societal concern, § 6-1603 does not violate the constitutional prohibition against special legislation. *Kirkland ex rel. Kirkland v. Blain County Med. Ctr.*, 134 Idaho 464, 4 P.3d 1115 (2000).

Practice in Courts.

Section 34 of Session Laws 1903, p. 223, relative to the distribution of water and adjudication of water rights, which authorizes suit for adjudication of water rights to be brought against "all claimants of a right to the use of the water" of stream in question, without naming defendants or requiring any effort for personal service on such defendants as might be found, is special legislation, regulating practice and is repugnant to this section. *Bear Lake County v. Budge*, 9 Idaho 703, 75 P. 614, 108 Am. St. R. 179 (1904).

Session Laws 1903, p. 223, providing for appropriation, diversion, and adjudication of rights to use of waters of state, and which contains certain peculiar provisions as to duties of state engineer, apportionment of costs, preparation and use of maps as evidence, etc., in proceedings for adjudication of water rights, is not repugnant to subdivision 3 of this section, which prohibits local laws regulating practice. *Boise City Irrigation & Land Co. v. Stewart*, 10 Idaho 38, 77 P. 25, 77 P. 321 (1904).

Public Assistance.

The public assistance act (§§ 56-201 — 56-230) is not a local and special law. *State ex rel. Nielson v. Lindstrom*, 68 Idaho 226, 191 P.2d 1009 (1948).

Act that permitted recovery by state from real estate of applicant for old-age assistance was not unconstitutional on the ground that it

was a local or special law since it was applicable to all persons in the state holding real estate. *Newland v. Child*, 73 Idaho 530, 254 P.2d 1066 (1953).

Public Health Districts.

Legislation creating public health districts is a general, and not a local or special law, since the legislation applies equally to all areas of the state, with no county receiving special consideration or treatment, and the privileges conferred and liabilities imposed under the legislation are equal. *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972).

Regulating Weight of Vehicles.

Former section which authorized commission of public works to issue regulations reducing weight of vehicles on public highways of the state was held constitutional. *State v. Heitz*, 72 Idaho 107, 238 P.2d 439 (1951).

School District Annexation.

Acts 1939, ch. 92, a special law providing election for annexation of territory to Independent School District No. 1 of Nez Perce County does not violate this section. *Common Sch. Dist. No. 2 v. District No. 1*, 71 Idaho 192, 227 P.2d 947 (1951).

State Parks.

Sections 67-4229 — 67-4231 establishing state parks on state-owned lands, although in fact special legislation, were not unconstitutional and did not fall within the prohibition of paragraph 7 of this section. *State ex rel. Idaho State Park Bd. v. City of Boise*, 95 Idaho 380, 509 P.2d 1301 (1973).

Sunday Closing.

Session Laws 1907, p. 223 (repealed), prohibiting keeping open on Sunday of certain places for business purposes, were not violative of this section, prohibiting local or special legislation. *State v. Dolan*, 13 Idaho 693, 92 P. 995, 14 L.R.A. (n.s.) 1259 (1907).

Taxation.

Good roads law, providing for the organization and government of good road districts, is not a local or special law as used in this section, as it is general in its application and applies alike to all sections of state where taxpayers are willing to assume burden of additional taxation for purpose of improving roads within such sections, and applies to all good road districts within state, and relates to all of a class. *Hettinger v. Good Rd. Dist. No. 1*, 19 Idaho 313, 113 P. 721 (1911). Same reasoning applies to irrigation districts. *Emmett Irrigation Dist. v. Shane*, 19 Idaho 332, 113 P. 444 (1911).

Act regulating redemption of property pur-

chased and held by county for delinquent taxes is not special legislation within meaning of this provision, where it affects alike all persons whose taxes have become delinquent in respective years or will become delinquent. *Washington County v. Paradis*, 38 Idaho 364, 222 P. 775 (1923).

Statute taxing bank shares does not violate this section. *State ex rel. Bank of Eagle v. Leonardson*, 51 Idaho 646, 9 P.2d 1028 (1932).

The uniform registration act classifying motor vehicles and defining "commercial trucks" is not violative of this section. *Curtis v. Pfost*, 53 Idaho 1, 21 P.2d 73 (1933).

Provision of Boise City's Special Charter as to county collecting city taxes and compensation therefor controls over general statutes on the same subjects. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

This section was not contravened by the provisions of S.L. 1944 (2d E.S.), ch. 7, which provided a temporary special tax for the creation of a county teacher's aid fund. *Hanson v. De Coursey*, 66 Idaho 631, 166 P.2d 261 (1946).

Section 63-707 is not unconstitutional because it provides a different tax treatment of the operating property of electric public utilities as contrasted with the tax treatment of the operating property of all other utilities and railroads. *School Dist. No. 25 v. State Tax Comm'n*, 101 Idaho 283, 612 P.2d 126 (1980).

Because it is logical and reasonable for the legislature to believe that small resort cities, because of the disproportionate ratio of tourist to residents, require greater or different tax relief than larger resort cities, the classifications in the City Property Tax Alternatives Act of 1978 are not arbitrary, capricious or unreasonable. *Sun Valley Co. v. City of Sun Valley*, 109 Idaho 424, 708 P.2d 147 (1985).

The constitutional grant of power to municipal corporations, to assess and collect taxes for all purposes of such corporations, is not self-executing or unlimited; it is limited by what taxing power the legislature authorizes in its implementing legislation. *City of Lava Hot Springs v. Campbell*, 125 Idaho 768, 874 P.2d 579 (Ct. App. 1994).

Summary judgment in favor of the county was reversed in an action to declare the Resort County Local Option Sales or Use Tax Act (§§ 63-2601 through 63-2608) unconstitutional because the Act was a local and special law that violated Idaho Const., Art. III, § 19. *Concerned Taxpayers of Kootenai County v. Kootenai County*, 137 Idaho 496, 50 P.3d 991 (2002).

Worker's Compensation.

A law is not special in character if all persons subject to it are treated alike, under similar circumstances and conditions, in re-

spect both of the privileges conferred and the liabilities imposed. *Wanke v. Ziebarth Constr. Co.*, 69 Idaho 64, 202 P.2d 384 (1948).

The contention that former law limiting the making of an application for modification of compensation award to four years, but not oftener than once in six months, was unconstitutional in that it was a special law was incorrect as the law was general in terms, all persons subject to it were treated alike as to privileges, protection, and in every other respect. *Wanke v. Ziebarth Constr. Co.*, 69 Idaho 64, 202 P.2d 384 (1948).

Former § 72-1429P was not unconstitutional since it has a fair and substantial relation to the object of workmen's compensa-

tion legislation. *Brock v. City of Boise*, 95 Idaho 630, 516 P.2d 189 (1973).

Opinions of Attorney General. Except where the Constitution limits the authority of the legislature with respect to the sale of state property as with respect to endowment and trust property, the legislature may authorize the sale of state buildings and may place the proceeds thereof in the general fund. OAG 83-2.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 535; Vol. II, pp. 1227, 1232, 1239, 1249.

73 Am. Jur. 2d, Statutes, §§ 6-8.

82 C.J.S., Statutes, §§ 162-211.

§ 20. Gambling prohibited. — (1) Gambling is contrary to public policy and is strictly prohibited except for the following:

- a. A state lottery which is authorized by the state if conducted in conformity with enabling legislation; and
- b. Pari-mutuel betting if conducted in conformity with enabling legislation; and
- c. Bingo and raffle games that are operated by qualified charitable organizations in the pursuit of charitable purposes if conducted in conformity with enabling legislation.

(2) No activities permitted by subsection (1) shall employ any form of casino gambling including, but not limited to, blackjack, craps, roulette, poker, bacarrat, keno and slot machines, or employ any electronic or electromechanical imitation or simulation of any form of casino gambling.

(3) The legislature shall provide by law penalties for violations of this section.

(4) Notwithstanding the foregoing, the following are not gambling and are not prohibited by this section:

- a. Merchant promotional contests and drawings conducted incidentally to bona fide nongaming business operations, if prizes are awarded without consideration being charged to participants; and
- b. Games that award only additional play.

Compiler's notes. As originally adopted the section provided as follows:

"§ 20. The legislature shall not authorize any lottery or gift enterprise under any pretense or for any purpose whatever."

This section was amended as proposed by S.L. 1987, p. 801, H.J.R. No. 3, and ratified at the general election November 8, 1988 to read as follows:

"§ 20. Gambling not to be authorized. — No game of chance, lottery, gift enterprise or gambling shall be authorized under any pretense or for any purpose whatever, except for the following:

"a. A state lottery which is authorized by the state if conducted in conformity with law; and

"b. Pari-mutuel betting if conducted in conformity with law; and

"c. Charitable games of chance which are operated by qualified charitable organizations in the pursuit of charitable purposes if conducted in conformity with law."

It was amended as proposed by S.L. 1993, p. 8, H.J.R. No. 4, 1992 First Extraordinary Session and ratified at the general election November 3, 1992, to read as it now appears.

Cross ref. Bingo and raffles, regulation, §§ 67-7701 — 67-7711.

Gambling prohibited, §§ 18-3801, 18-3102.

Comp. provisions: Cal. Art. 4, § 19.

Nev. Art. 4, § 24.

Utah. Art. 6, § 26.

Wash. Art. 2, § 24.

Cited in: *Nab v. Hills*, 92 Idaho 877, 452 P.2d 981 (1969).

ANALYSIS

Coin operated devices.
 Constitutional amendment.
 Construction.
 Effect of payment of taxes or license.
 Horse racing meets.
 Indian gaming.
 Initiative power.
 Licensing operation.
 Lotteries.
 — Prohibited.
 Lottery defined.
 Parties to injunction.
 Pinball game.
 Referral sales.
 Slot machine licensing.
 Stealing slot machines.

Coin Operated Devices.

Acts 1947, ch. 151 declaring coin operated devices as gaming devices but not lotteries, and Acts 1947, ch. 239 defining punchboards, chance spindles, and chance prize games, violate this section since devices described in designated acts are lotteries. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953).

Decree enjoining operation of coin operated and gaming devices on the ground that statutes permitting operation were unconstitutional was modified so as to eliminate provisions of decree establishing lien on real estate, ordering seizure and sale of the personal property, and closing of places operated by defendants for period of a year, since machines and devices were operated in good faith pursuant to statutes duly enacted by legislature though same were unconstitutional. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953).

Constitutional Amendment.

Where statement of meaning and purpose of proposed constitutional amendment clearly explained a prohibition of gambling in Idaho, the fact that Indian gaming was not specifically named did not mean the voters had been misled; thus, the statement of purpose and meaning met the requirements of this section. *Nez Perce Tribe v. Cenarrusa*, 125 Idaho 37, 867 P.2d 911 (1993).

Constitutional amendment prohibiting casino gambling was properly presented for voter approval on election ballot; accordingly the constitutional amendment to this section was validly approved by the Idaho electorate. *Nez Perce Tribe v. Cenarrusa*, 125 Idaho 37, 867 P.2d 911 (1993).

Construction.

In construing a statute making it a misdemeanor to operate certain enumerated gam-

bling devices or "any other devices" employed in gambling, the doctrine of "ejusdem generis" is inapplicable. *Pepple v. Headrick*, 64 Idaho 132, 128 P.2d 757 (1942).

All lotteries no matter what the purpose are barred by this provision. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953).

Effect of Payment of Taxes or License.

Payment of taxes on, or licensing of, a gambling device or machine furnishes no justification for its operation in violation of law prohibiting gambling. *Pepple v. Headrick*, 64 Idaho 132, 128 P.2d 757 (1942).

Horse Racing Meets.

A horse racing meet where the pari-mutuel system of wagering is used does not contravene the constitutional prohibition against lotteries as the pari-mutuel system is not one solely based on chance, which constitutes an essential requisite of a lottery. *Oneida County Fair Bd. v. Smylie*, 86 Idaho 341, 386 P.2d 374 (1963).

Indian Gaming.

Neither the language of the Indian Gaming Regulatory Act (25 U.S.C. § 2701 et seq.), the legislative history and statement of purpose of the Act, nor the later federal cases interpreting the Act, can be read to allow tribes to conduct casino-type gaming on reservations in Idaho, when the laws and public policy of Idaho are so clearly against such gaming. *Coeur D'Alene Tribe v. State*, 842 F. Supp. 1268 (D. Idaho 1994), aff'd, 51 F.3d 876, cert. denied, 133 U.S. 209, 116 S. Ct. 305, 133 L. Ed. 2d 209 (1995).

Initiative Power.

Initiative legislation is on equal footing with legislation enacted by the state and must comply with the same constitutional requirements as legislation enacted by the Idaho legislature. *Westerberg v. Andrus*, 114 Idaho 401, 757 P.2d 664 (1988).

This section, which prohibits the "legislature" from authorizing "any lottery or gift enterprise," also prohibits the electorate from enacting a lottery through the initiative process. *Westerberg v. Andrus*, 114 Idaho 401, 757 P.2d 664 (1988).

Licensing Operation.

Issuance of state license for operation of gambling machines and devices pursuant to statutes enacted by legislature and passage of ordinance authorizing operations did not prevent court from declaring operations illegal as a lottery. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953).

In suit by state to recover its share of amount collected by city from operation of slot machines the city could not defend on the ground that statute authorizing licensing of slot machines was unconstitutional, hence state was entitled to recover amount withheld

by city. *State ex rel. Nielson v. City of Gooding*, 75 Idaho 36, 266 P.2d 655 (1953).

Lotteries.

—Prohibited.

Chapter 63-26 (now repealed) is unconstitutional as it violates this section which prohibits lotteries. *Westerberg v. Andrus*, 114 Idaho 401, 757 P.2d 664 (1988).

Lottery Defined.

A scheme is a lottery if elements of chance, consideration, and prize are all present. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953).

Parties to Injunction.

Citizens of county were entitled to maintain action in name of state to enjoin operation of gambling machines and devices on the ground that operation of same constituted a lottery. *State v. Village of Garden City*, 74 Idaho 513, 265 P.2d 328 (1953).

Pinball Game.

Pinball games operated by placing a nickel in a slot and then releasing a metal ball, which, in its operation, would return to the player a specified number of nickels if he won, was a "gambling device" and its seizure and confiscation would not be enjoined. *Pepple v.*

Headrick, 64 Idaho 132, 128 P.2d 757 (1942).

Referral Sales.

A referral sales scheme for the purchase of stereo sets which involved skill and judgment, practiced by the participant or someone in his behalf, was not a lottery prohibited by this section. *Braddock v. Family Fin. Corp.*, 95 Idaho 256, 506 P.2d 824 (1973).

Slot Machine Licensing.

Court declined to pass upon constitutionality of statute licensing slot machines. *Hill v. Schultz*, 71 Idaho 145, 227 P.2d 586 (1951).

Stealing Slot Machines.

Value of slot machines taken by defendant in burglary was immaterial as far as his guilt of crime of burglary was concerned, since the burglary was shown by the breaking and entering, and the fact that the slot machines could only be used for an illegal purpose had nothing to do with the offense charged. *State v. Johnson*, 77 Idaho 1, 287 P.2d 425 (1955), cert. denied, 350 U.S. 1007, 76 S. Ct. 649, 100 L. Ed. 869 (1956).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 541; Vol. II, p. 1248.

§ 21. Signature of bill and resolutions. — All bills or joint resolutions passed shall be signed by the presiding officers of the respective houses.

Duties of Officers After Adjournment.

The duty of signing bills and joint resolutions which have been passed but remain unsigned at the time of adjournment, devolves upon the speaker of the house and lieutenant-governor as president of the senate in their respective official capacities as such presiding officers, and they can not be compensated therefor in addition to their regular remuneration. *State ex rel. Wright v. Gossett*, 62 Idaho 521, 113 P.2d 415 (1941).

The fact that help was provided for doing of certain work after adjournment of the legislature disclosed a legislative intent that the speaker of the house and chief clerk thereof

and lieutenant-governor as president of the senate and secretary thereof were not required to personally perform the duties and acts for which help had been provided. *State ex rel. Wright v. Gossett*, 62 Idaho 521, 113 P.2d 415 (1941).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 542; Vol. II, p. 1249.

73 Am. Jur. 2d, Statutes § 65.

Effect of failure of officers of legislature to sign bills as required by constitutional amendment. 95 A.L.R. 278.

§ 22. When acts take effect. — No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.

Cross ref. Effective date, statutes and resolutions, § 67-510.

Comp. provisions: Utah. Art. 6, § 25.

Cited in: *Shoshone County v. Thompson*,

11 Idaho 130, 81 P. 73 (1905); *Gillesby v. Board of Comm'rs*, 17 Idaho 586, 107 P. 71 (1910); *Peavy v. McCombs*, 26 Idaho 143, 140 P. 965 (1914); *Idaho Power & Light Co. v.*

Blomquist, 26 Idaho 222, 141 P. 1083, 1916E Ann. Cas. 282 (1914); Northern P.R.R. v. Chapman, 29 Idaho 294, 158 P. 560 (1916).

ANALYSIS

Absence of emergency clause.
Determination of emergency.
Emergency clause effective date.
Referendum.

Absence of Emergency Clause.

Since the 1972 amendment to § 49-1210 (now repealed) raising the motor fuel excise tax from seven cents per gallon to eight and one half cents provided an effective date only seven days after the legislature adjourned but did not contain an emergency clause, and since the retroactive 1973 amendment similarly did not contain an emergency clause, the state tax commission had no authority to collect the one and one-half cent increase prior to the expiration of the 60 day period dating from the adjournment of the legislature. *V-1 Oil Co. v. State Tax Comm'n*, 98 Idaho 140, 559 P.2d 756 (1977).

Determination of Emergency.

This section leaves to each session of the legislature to decide for itself, at the time of enactment of a law, whether or not an emergency exists for its immediate operation and fix the time when it shall take effect. If emergency actually exists and is declared, the law takes effect immediately regardless of referendum and remains effective until and unless it is defeated or repealed. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

The legislature's determination of an emergency in an act is a policy decision exclusively within the ambit of legislative authority, and the judiciary cannot second-guess that decision; in the absence of a legislative invasion of constitutionally protected rights, the judicial branch of government must respect and defer to the legislature's exclusive policy decisions. *Idaho State AFL-CIO v. Leroy*, 110 Idaho 691, 718 P.2d 1129 (1986).

Emergency Clause Effective Date.

Where act carries emergency clause and is approved by governor on certain date, it becomes effective as of that day. *State ex rel. Gallett v. Cleland*, 42 Idaho 803, 248 P. 831 (1926).

The legislature of this state is authorized by this section to declare an emergency and thereby render an act effective immediately upon its passage; the people of this state are statutorily authorized by § 34-1803 to approve or reject that legislation at the next biennial election. Hence, H.B. 2 (Acts 1985, ch. 2; §§ 44-2001 — 44-2011), designated as an emergency bill by the legislature, was effective immediately and would continue to be effective until the next biennial election, and thereafter only if approved by the voters. *Idaho State AFL-CIO v. Leroy*, 110 Idaho 691, 718 P.2d 1129 (1986).

Referendum.

There is no conflict between the emergency clause provided for in this section and the provision for referendum in section 1 of this article. The referendum clause is not self-operating and was dormant until S.L. 1933, ch. 210, § 3 (§ 34-1803) was enacted and this act applies to acts for which no emergency exists and for which referendum has been petitioned. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

The clause of the referendum law in S.L. 1933, ch. 210, § 3 (§ 34-1803), providing that any measure referred to the people shall become a law only when approved by the voters denies the legislature the right to enact emergency laws to take immediate effect to meet acute and vital emergencies and conflicts with this section. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 543; Vol. II, p. 1251.

What amounts to adjournment within constitutional provision that bill shall become law if not returned by executive within specified time unless adjournment prevents its return. 64 A.L.R. 1446.

Power of executive to sign bill after adjournment or during recess of legislature. 64 A.L.R. 1468.

Including Sunday in computation of time for presentation of bill. 71 A.L.R. 1363.

Stage at which statute passes beyond the power of the legislature to reconsider or recall. 96 A.L.R. 1309.

§ 23. Compensation of members. — The legislature shall have no authority to establish the rate of its compensation and expense by law. There is hereby authorized the creation of the citizens committee on legislative compensation, which shall consist of six members, three to be appointed by the governor and three to be appointed by the supreme court, whose terms of office and qualifications shall be as provided by law. Members of the committee shall be citizens of the state of Idaho other than

public officials holding an office to which compensation is attached. The committee shall, on or before the last day of November of each even-numbered year, establish the rate of compensation and expenses for services to be rendered by members of the legislature during the two-year period commencing on the first day of December of such year. The compensation and expenses so established shall, on or before such date, be filed with the secretary of state and the state controller. The rates thus established shall be the rates applicable for the two-year period specified unless prior to the twenty-fifth legislative day of the next regular session, by concurrent resolution, the senate and house of representatives shall reject or reduce such rates of compensation and expenses. In the event of rejection, the rates prevailing at the time of the previous session, shall remain in effect.

The officers of the legislature, including committee chairmen, may, by virtue of the office, receive additional compensation as may be provided by the committee. No change in the rate of compensation shall be made which applies to the legislature then in office except as provided herein.

When convened in extra session by the governor, no such session shall continue for a period longer than twenty days.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 23. Compensation and mileage of members. — Each member of the legislature shall receive for his services a sum not exceeding five dollars per day from the commencement of the session; but such pay shall not exceed for each member, except the presiding officers, in the aggregate, \$300 for per diem allowances for any one session; and shall receive each the sum of ten cents per mile each way by the usual traveled route.

When convened in extra session by the governor, they shall each receive five dollars per day; but no extra session shall continue for a longer period than twenty days, except in case of the first session of the legislature. They shall receive such mileage as is allowed for regular sessions. The presiding officers of the legislature shall each, in virtue of his office, receive an additional compensation equal to one-half of his per diem allowance as a member; provided, that whenever any member of the legislature shall travel on a free pass in coming to or returning from a session of the legislature, the number of miles actually traveled on such pass shall be deducted from the mileage of such member."

An amendment of this section was proposed by S.L. 1945, p. 399, H.J.R. No. 8. This proposed amendment was ambiguous as to the total compensation that might be received by members of the legislature. To correct this situation a second amendment was proposed by S.L. 1946 (2d E.S.), H.J.R. No. 1, which, by § 4, rescinded S.L. 1945, p. 399, H.J.R. No. 8. H.J.R. No. 1 was voted on and approved Nov. 5, 1946. However, H.J.R. No. 8 was inadvertently printed in the 1947 Acts as having been approved.

As amended by S.L. 1946 (2d E.S.), H.J.R. No. 1 and ratified at the general election in 1946, this section provided as follows:

"§ 23. Compensation and mileage of members. — Each member of the legislature shall receive for his services a sum of ten dollars per day from the commencement of the session; but such pay shall not exceed for each member, except the presiding officers, in the aggregate, \$600 for per diem allowances for any one session; and shall receive each the sum of ten cents per mile each way by the usual traveled route.

When convened in extra session by the governor, they shall each receive ten dollars per day; but no extra session shall continue for a longer period than twenty days. They shall receive such mileage as allowed for regular sessions. The presiding officers of the legislature shall each, in virtue of his office, receive an additional compensation equal to one-half his per diem allowance as a member; provided, that whenever any member of the legislature shall travel on a free pass in coming to or returning from a session of the legislature, the number of miles actually traveled on such pass shall be deducted from the mileage of such member."

It was amended as proposed by H.J.R. No. 6 (S.L. 1976, p. 1272) and ratified at the general election on November 2, 1976, to read as follows:

"§ 23. Compensation of members. — The legislature shall have no authority to establish the rate of its compensation and expense by law. There is hereby authorized the creation of the citizens committee on legislative compensation, which shall consist of six (6) members, three (3) to be appointed

by the governor and three (3) to be appointed by the supreme court, whose terms of office and qualifications shall be as provided by law. Members of the committee shall be citizens of the state of Idaho other than public officials holding an office to which compensation is attached. The committee shall, on or before the last day of November of each even-numbered year, establish the rate of compensation and expenses for services to be rendered by members of the legislature during the two-year period commencing on the first day of December of such year. The compensation and expenses so established shall, on or before such date, be filed with the secretary of state and the state auditor. The rates thus established shall be the rates applicable for the two-year period specified unless prior to the twenty-fifth legislative day of the next regular session, by concurrent resolution, the senate and house of representatives shall reject or reduce such rates prevailing at the time of the previous session, shall remain in effect.

The officers of the legislature, including committee chairmen, may, by virtue of the office, receive additional compensation as may be provided by the committee. No change in the rate of compensation shall be made which applies to the legislature then in office except as provided herein.

When convened in extra session by the governor, no such session shall continue for a period longer than twenty (20) days."

The amendment to section 23 of this article, as proposed by S.J.R. No. 9 (S.L. 1967, p. 1572) was defeated in the general election on November 5, 1968.

An amendment to this section which was proposed by S.J.R. No. 112 (S.L. 1971, p. 1407) was defeated in the general election in 1972.

An amendment to this section which was proposed by S.J.R. No. 113 (S.L. 1971, p. 1409) was defeated in the general election in 1972.

This section was amended by S.J.R. No. 109, § 1 (S.L. 1994, p. 1493) and ratified at the general election November 8, 1994, to read as it now appears.

Comp. provisions: Mont. Art. 5, § 5.

Utah. Art. 6, § 9.

Sec. to sec. ref. This section is referred to in § 67-412.

ANALYSIS

Allowances for additional expenses.

Construction in general.

Decision prior to amendment.

Mileage.

Officers performing duties after adjournment.

Recovery of illegal payments.

Rejection of compensation rate.

Subsistence of legislators.

Allowances for Additional Expenses.

An allowance of five dollars per day to committee members of the legislature for expenses necessarily incurred in the discharge of their duties where there was no showing that it was in fact an augmentation of either the per diem or mileage allowance and thus violative of those restrictions would be presumed as a compliance with the limitations of the constitution and not an unlawful attempt to augment the per diem of its members. *Eberle v. Nielson*, 78 Idaho 572, 306 P.2d 1083 (1957).

Where the section expressly allows to each legislative member a per diem not to exceed \$600 for any one session, also a mileage allowance for travel, but is silent as to any other expenses, it follows that the enumeration of an allowance for services and an allowance for travel and the absence of any restrictive terms limiting the legislators to such allowances leaves the legislature free to provide for the payment of other expenses necessarily incurred by its members in the discharge of their duties. *Eberle v. Nielson*, 78 Idaho 572, 306 P.2d 1083 (1957).

Construction in General.

The specification of certain things in the Constitution thereby excludes all others. This is an application of the doctrine *expressio unius exclusio alterius est*. *Peck v. State*, 63 Idaho 375, 120 P.2d 820 (1941).

Decision Prior to Amendment.

This section, which limits compensation of members of legislature to \$300 for any one session, applies to regular biennial sessions of legislature and does not apply to first session directed by Const., Art. 21, § 14, to be called by governor immediately upon his qualification and assumption of duties. *Goodnight v. Moody*, 3 Idaho 7, 26 P. 121 (1891).

Mileage.

Mileage allowance to legislators accrues only where members actually traverse distance from their respective homes to capital and there incur expense. *Reed v. Gallet*, 50 Idaho 638, 299 P. 337 (1931).

Mileage of legislators can not be allowed for attending an extra session when they remained at Boise, after an adjournment of the regular session and until the opening of the extra session, and any attempt so to allow such mileage is invalid. *Reed v. Gallet*, 50 Idaho 638, 299 P. 337 (1931).

Officers Performing Duties After Adjournment.

The fact that help was provided for doing of certain work after adjournment of the legislature disclosed a legislative intent that the speaker of the house and chief clerk thereof and lieutenant-governor as president of the

senate and secretary thereof, were not required to personally perform the duties and acts for which help had been provided. State ex rel. Wright v. Gossett, 62 Idaho 521, 113 P.2d 415 (1941).

The duty of signing bills and joint resolutions which have been passed but remain unsigned at the time of adjournment, devolves upon the speaker of the house and lieutenant-governor as president of the senate in their respective official capacities as such presiding officers, and they cannot be compensated therefor in addition to their regular remuneration. State ex rel. Wright v. Gossett, 62 Idaho 521, 113 P.2d 415 (1941).

The actual work of preparing legislative journals, inspecting them, completing the enrollment of bills and indexing laws, resolutions, etc., and taking an inventory of legislative furniture is not "germane" to the office of speaker of the house or lieutenant-governor as president of the senate, but the employing of clerical help and supervising employees of the legislature in the performance of their work is "germane" to such offices, as regards the validity of statutes providing further compensation for the speaker of the house and lieutenant-governor as president of the senate for services performed after adjournment of a session. State ex rel. Wright v. Gossett, 62 Idaho 521, 113 P.2d 415 (1941).

Recovery of Illegal Payments.

Where state officers, whose compensation is fixed by law, are paid an additional compensation for services provided for under an unconstitutional enactment, the state is not

precluded from recovering the same as against the contention that the same had been allowed by the state board of examiners, and that such board was vested with absolute power to pay or reject claims either rightly or wrongly, since the board does not pass on salaries and compensation of officers fixed by law. State ex rel. Wright v. Gossett, 62 Idaho 521, 113 P.2d 415 (1941).

Rejection of Compensation Rate.

Where, by a concurrent resolution adopted by the House on the 18th legislative day and by the Senate on the 24th legislative day of the 1983 session, the legislature rejected a new compensation rate established by the citizens committee in October of 1982, the old rate of compensation remained in effect notwithstanding the fact that the Senate entertained a motion to reconsider the rejection on the 25th legislative day, before again rejecting the recommendation of the citizens committee. Beitelspacher v. Risch, 105 Idaho 605, 671 P.2d 1068 (1983).

Subsistence of Legislators.

There is no authority to reimburse members of the legislature for subsistence while serving and attending a session of the legislature. Peck v. State, 63 Idaho 375, 120 P.2d 820 (1941).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 541, 543; Vol. II, p. 1251.

72 Am. Jur. 2d, States, Territories and Dependencies, § 56.

81A C.J.S., States, § 46.

§ 24. Promotion of temperance and morality. — The first concern of all good government is the virtue and sobriety of the people, and the purity of the home. The legislature should further all wise and well directed efforts for the promotion of temperance and morality.

Cited in: State v. Musser, 67 Idaho 214, 176 P.2d 199 (1946); Oneida County Fair Bd. v. Smylie, 86 Idaho 341, 386 P.2d 374 (1963); Henson v. Department of Law Enforcement, 107 Idaho 19, 684 P.2d 996 (1984).

Liquor Laws.

Idaho Code § 23-903 governing the issuance of liquor licenses is not an arbitrary denial of use of due process in light of the

constitutional provisions governing legislative control over the retail sale of liquor. Crazy Horse, Inc. v. Pearce, 98 Idaho 762, 572 P.2d 865 (1977).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 118, 121, 549; Vol. II, pp. 1279, 1339.

§ 25. Oath of office. — The members of the legislature shall, before they enter upon the duties of their respective offices, take or subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of Idaho, and that I will faithfully discharge the duties of senator (or representative, as the case may be) according to the

best of my ability.” And such oath may be administered by the governor, secretary of state, or judge of the Supreme Court, or presiding officer of either house.

Comp. provisions: Cal. Art. 20, § 3.

Mont. Art. 3, § 3.

Ore. Art. 4, § 31.

Utah. Art. 4, § 10.

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 549; Vol. II, p. 1261.

81A C.J.S., States, § 42.

§ 26. Power and authority over intoxicating liquors. — From and after the thirty-first day of December in the year 1934, the legislature of the state of Idaho shall have full power and authority to permit, control and regulate or prohibit the manufacture, sale, keeping for sale, and transportation for sale, of intoxicating liquors for beverage purposes.

Compiler’s notes. This section as originally adopted was added to the Constitution, as proposed by S.L. 1915, p. 395, S.J.R. No. 1, and ratified at the general election in November, 1916, and provided as follows:

“**§ 26. Prohibition of intoxicating liquors.** — From and after the first day of May in the year 1917, the manufacture, sale, keeping for sale, and transportation for sale of intoxicating liquors for beverage purposes are forever prohibited. The legislature shall enforce this section by all needful legislation.”

It was amended, as proposed by S.L. 1933, p. 470, S.J.R. No. 5, and ratified at the general election in November, 1934, to read as it now appears.

Sec. to sec. ref. This section is referred to in § 23-1101.

Cited in: State v. Romich, 67 Idaho 229, 176 P.2d 204 (1946).

ANALYSIS

Cities and towns.

Control of sale of liquor.

Effect of amendment.

Legislative powers (prior to 1934 amendment).

Liquor board may employ counsel.

Liquor licenses.

Sale to indians.

Sunday closing law.

Cities and Towns.

This amendment to the Constitution did not vest exclusive jurisdiction in the legislature to control liquor traffic within the limits of incorporated cities and towns. State v. Musser, 67 Idaho 214, 176 P.2d 199 (1946).

Control of Sale of Liquor.

Regulation and control of the sale of intoxicating liquors, including licensing of retail liquor outlets, is vested in the legislature. Adams v. Department of Law Enforcement, 99 Idaho 255, 580 P.2d 858 (1978).

Effect of Amendment.

This amendment does not repeal statutes of state prohibiting possession of intoxicating liquors. State v. Moore, 36 Idaho 565, 212 P. 349 (1922), aff’d, 264 U.S. 569, 44 S. Ct. 333, 68 L. Ed. 854 (1924).

Under this section the legislature was empowered to enact all legislation needed to prohibit the manufacture, sale and traffic of liquor, and, by the amendment of S.L. 1935, p. 375, the state ceased to be a prohibition state. State v. Musser, 67 Idaho 214, 176 P.2d 199 (1946).

Legislative Powers (Prior to 1934 Amendment).

There is nothing in this section that can be construed as depriving legislature of plenary powers of legislation on this subject. State v. Moore, 36 Idaho 565, 212 P. 349 (1922), aff’d, 264 U.S. 569, 44 S. Ct. 333, 68 L. Ed. 854 (1924).

Since this section gave the legislature full power and authority to regulate intoxicating liquor for beverage purposes, neither the judicial nor the executive departments of the government may deprive it of such power. Taylor v. State, 62 Idaho 212, 109 P.2d 879 (1941).

Liquor Board May Employ Counsel.

This section, as amended in 1934 authorizes the legislature to empower the Idaho liquor control board to employ counsel, and the contention that it was the official duty of the attorney general to advise and represent such board is unavailing. Taylor v. State, 62 Idaho 212, 109 P.2d 879 (1941).

Liquor Licenses.

Idaho Code § 23-903 governing the issuance of liquor licenses is not an arbitrary denial of due process in light of the constitutional provisions governing legislative control over the retail sale of liquor. Crazy Horse, Inc. v. Pearce, 98 Idaho 762, 572 P.2d 865 (1977).

Sale to Indians.

Law that prohibited the sale of intoxicating liquor to Indians did not violate this section of the Constitution. *State v. Rorvick*, 76 Idaho 58, 277 P.2d 566 (1954).

Sunday Closing Law.

The provisions of this section prohibiting

the manufacture and sale of intoxicating liquor were repealed by the amendment of 1934 and the state is at present itself engaged in buying, selling and dispensing liquor, and Sunday closing law of 1907 is still in force and valid. *State v. Cranston*, 59 Idaho 561, 85 P.2d 682 (1938).

§ 27. Continuity of state and local governmental operations. —

The legislature, in order to insure continuity of state and local governmental operations in periods of emergency resulting from disasters caused by enemy attack or in periods of emergency resulting from the imminent threat of such disasters, shall have the power and the immediate duty (1) to provide for prompt and temporary succession to the powers and duties of public offices, of whatever nature and whether filled by election or appointment, the incumbents of which may become unavailable for carrying on the powers and duties of such offices, and (2) to adopt such other measures as may be necessary and proper for so insuring the continuity of governmental operations. In the exercise of the powers hereby conferred, the legislature shall in all respects conform to the requirements of this constitution except to the extent that in the judgment of the legislature so to do would be impracticable or would admit of undue delay.

Compiler's notes. This section was added by S. L. 1959, p. 658, S.J.R. No. 4 and ratified at the general election in November, 1960.

Article IV**EXECUTIVE DEPARTMENT****SECTION.**

1. Executive officers listed — Term of office — Place of residence — Duties.
2. Election of officers.
3. Qualifications of officers.
4. Governor is commander of militia.
5. Supreme executive power vested in governor.
6. Governor to appoint officers.
7. The pardoning power.
8. Governor may require reports — Messages to legislature.
9. Extra sessions of legislature.

SECTION.

10. Veto power.
11. Disapproval of appropriation bills.
12. Lieutenant governor to act as governor.
13. Lieutenant governor is president of senate.
14. President pro tempore to act as governor.
15. Great seal of the state.
16. Grants and permissions.
17. Accounts and reports of officers.
18. Board of examiners.
19. [Repealed.]
20. Departments limited.

§ 1. Executive officers listed — Term of office — Place of residence — Duties. — The executive department shall consist of a governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction, each of whom shall hold his office for four years beginning on the first Monday in January next after his election, commencing with those elected in the year 1946, except as otherwise provided in this Constitution. The officers of the executive department shall, during their terms of office, reside within the state. Their official office shall be located in the county where the seat of

government is located, there they shall keep public records, books and papers. They shall perform such duties as are prescribed by this Constitution and as may be prescribed by law, provided that the state controller shall not perform any post-audit functions.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 1. Executive officers listed — Term of office — Place of residence — Duties.

— The executive department shall consist of a governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, and superintendent of public instruction, each of whom shall hold his office for two years beginning on the first Monday in January next after his election, except as otherwise provided in this constitution. The officers of the executive department, excepting the lieutenant governor, shall, during their terms of office, reside at the seat of government, where they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this constitution and as may be prescribed by law."

The nineteenth session of the legislature, S.L. 1927, H.J.R. No. 8, p. 588, submitted to the people an amendment for this section changing the term of office of officers named therein from two to four years. Such amendment was ratified at the general election held November 6, 1928 (see S.L. 1929, p. 688), but was declared void for defective submission. *Lane v. Lukens*, 48 Idaho 517, 283 P. 532 (1929).

As amended by S.L. 1943, p. 380, S.J.R. No. 1 and ratified at the general election in November, 1944, this section provided as follows:

"§ 1. The executive department shall consist of a governor, lieutenant governor, secretary of state, [state auditor], state treasurer, attorney general and superintendent of public instruction, each of whom shall hold his office for four years beginning on the first Monday in January next after his election, commencing with those elected in the year 1946, except as otherwise provided in this Constitution. The officers of the executive department, excepting the lieutenant governor, shall, during their terms of office, reside within the county where the seat of government is located, there they shall keep the public records, books and papers. They shall perform such duties as are prescribed by this Constitution and as may be prescribed by law. The governor shall not succeed himself in office, but he shall be eligible to hold such office after a lapse of one full term."

This section was amended as proposed by S.L. 1955, p. 672, S.J.R. No. 6, and ratified at the general election in November, 1956, to read as follows:

"§ 1. Executive officers listed — Term

of office — Place of residence — Duties.

— The executive department shall consist of a governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general and superintendent of public instruction, each of whom shall hold his office for four years beginning on the first Monday in January next after his election, commencing with those elected in the year 1946, except as otherwise provided in this Constitution. The officers of the executive department, excepting the lieutenant governor, shall, during their terms of office, reside within the county where the seat of government is located, there they shall keep public records, books and papers. They shall perform such duties as are prescribed by this Constitution and as may be prescribed by law."

An amendment to this section which was proposed by S.J.R. No. 5 (S.L. 1967, p. 1570) was defeated in the general election in 1968.

An amendment to this section which was proposed by H.J.R. No. 52 (S.L. 1972, p. 1249) was defeated at the general election in 1972.

This section was amended by S.L. 1994, p. 1493, S.J.R. No. 109, § 2 and by S.L. 1994, p. 1500, H.J.R. No. 24, § 1, both ratified at the general election November 8, 1994, to read as it now appears.

Cross ref. Attorney general, §§ 67-1401, 67-1402.

Auditor of state, §§ 67-1001 — 67-1022.

Governor and lieutenant governor, §§ 67-801 — 67-806.

Secretary of state, §§ 67-901 — 67-912.

State treasurer, §§ 67-1201 — 67-1221.

Superintendent of public instruction, §§ 67-1501 — 67-1508.

Comp. provisions: Mont. Art. 6, § 1.

Utah. Art. 7, § 1.

Wash. Art. 3, § 1.

Wyo. Art. 4, § 11.

Sec. to sec. ref. This section is referred to in § 67-5201.

Cited in: *Taylor v. State*, 62 Idaho 212, 109 P.2d 879 (1941); *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

ANALYSIS

Attorney general.

Construction.

Salaries as gross income under tax law.

State auditor.

State treasurer.

Submission of amendment.

Attorney General.

The attorney general is empowered to institute civil actions on behalf of the state for the protection of the state's rights and interests. This right is recognized by the common law. *Howard v. Cook*, 59 Idaho 391, 83 P.2d 208 (1938).

The office of attorney general is not constitutionally vested with any common-law powers and duties that are immune to legislative change. *Padgett v. Williams*, 82 Idaho 28, 348 P.2d 944 (1960).

Construction.

This section as amended in accordance with the proposal of 1943 is not so inconsistent with Const., Art. 4, § 2 as will prevent the two sections from having concurrent operation. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

Salaries as Gross Income Under Tax Law.

The salary of the secretary of state, who is a "constitutional officer," is not within legislative definition of "gross income" for the purpose of income taxes as contained in § 63-3001, and is not subject to income taxes. *Girard v. Defenbach*, 61 Idaho 702, 106 P.2d 1010 (1940).

Where the state income tax act is copied largely from the federal act but pretermits certain provisions found in the federal act for taxing government employees, the legislative intent is thus made to appear that there was no purpose to tax the salaries of state officers. *Girard v. Defenbach*, 61 Idaho 702, 106 P.2d 1010 (1940).

The Supreme Court can not renounce jurisdiction of a case involving whether or not a state officer is liable for state income tax because the justices thereof were indirectly and individually interested in the question. *Girard v. Defenbach*, 61 Idaho 702, 106 P.2d 1010 (1940).

State Auditor.

The fruit and vegetable advertising law construed to conform to the requirements of this section by changing the word "treasurer" to "auditor" thus correcting a patent clerical error in the drafting of the measure. *State ex rel. Graham v. Enking*, 59 Idaho 321, 82 P.2d 649 (1938).

The powers and duties of the territorial controller as superintendent of fiscal concerns and affairs of the territory were impliedly vested by this section in the state auditor and the legislature could not divest him thereof by creating the office of comptroller and giving him the powers and duties of the auditor. To permit the legislature to create an office and vest in the appointee the powers and duties conferred on a constitutional officer would be to permit the legislature to nullify the Consti-

tution. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

The fact that the words "state auditor" were inadvertently omitted in enrolling the proposed amendment of this section adopted by the legislature in 1943 did not defeat its constitutionality where said words appeared in the title of the resolution and in the body of the resolution as introduced and no amendment was ever adopted by the legislature striking out these words. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

Since the Territorial Controller was authorized to perform all the types of audits which were performed in the territory prior to statehood, the controller was charged with superintending the fiscal concerns of the territory, and the controller was expressly directed to perform certain post-audit functions, the Territorial Controller would have been authorized to perform a modern post-audit function under this section, should that function have been in use at the time. Therefore, since the State Auditor has implied constitutional powers and duties equivalent to those of the Territorial Controller, performing the post-audit function is a constitutional duty of the State Auditor. *Williams v. State Legislature*, 111 Idaho 156, 722 P.2d 465 (1986).

The legislature may not prohibit the State Auditor from performing his or her constitutional duty of performing the post-audit function through the use of a line-item appropriation. *Williams v. State Legislature*, 111 Idaho 156, 722 P.2d 465 (1986).

State Treasurer.

Under this section and laws of Idaho describing official duties of state treasurer, state assumes complete control, leaving district officials no control over assessments levied on account of interest, principal, and safety fund for district bonds or contracts with the United States, which funds pass completely to the state treasurer, though district officials retained control over money collected for operation and maintenance purposes. *Hurlebaus v. American Falls Reservoir Dist.*, 49 Idaho 158, 286 P. 598 (1930).

Submission of Amendment.

It was not necessary that the amendment proposed for this section in 1943 be broken down into separate questions, to wit, whether the term of office should be extended from two to four years, whether the officers mentioned in said proposed amendment could, during their term of office, reside within the county where the seat of government is located and that "the governor shall not succeed himself in office, but he shall be eligible to hold such office after the lapse of one full term." *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

Opinions of Attorney General. The transfer of the prison industries betterment

fund from the aegis of the state auditor to the separate and exclusive control of the correctional industries commission is a constitutionally impermissible violation of this section. OAG 83-4.

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 106, 411, 434; Vol. II, pp. 1414, 1543.

Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 411; Vol. II, p. 1414.

16 Am. Jur. 2d, Constitutional Law, §§ 303 — 305.

38 Am. Jur. 2d, Governor, §§ 1, 2, 4.

16 C.J.S., Constitutional Laws, § 215.

81A C.J.S., States, § 130.

§ 2. Election of officers. — The officers named in section 1 of this article shall be elected by the qualified electors of the state at the time and places of voting for members of the legislature, and the persons, respectively, having the highest number of votes for the office voted for shall be elected; but if two (2) or more shall have an equal and the highest number of votes for any one (1) of said offices, the two (2) houses of the legislature at its next regular session, shall forthwith, by joint ballot, elect one (1) of such persons for said office. The returns of election for the officers named in section 1 shall be made in such manner as may be prescribed by law, and all contested elections of the same, other than provided for in this section, shall be determined as may be prescribed by law.

Comp. provisions: Wash. Art. 3, § 4.

Election of State Executive Officers.

The amendment of Art. 4, § 1 in accordance with the proposal of 1943 made no change in this section but only changed its application; although the executive officers are given four-year terms by the amendment of § 1, they will still be elected at those elections when

members of the legislature are voted for, though not at every such election. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 416; Vol. II, p. 1414.

38 Am. Jur. 2d, Governor, § 2.

§ 3. Qualifications of officers. — No person shall be eligible to the office of governor or lieutenant governor unless he shall have attained the age of thirty years at the time of his election; nor to the office of secretary of state, state controller, or state treasurer, unless he shall have attained the age of twenty-five years; nor to the office of attorney general unless he shall have attained the age of thirty years, and have been admitted to practice in the Supreme Court of the state or territory of Idaho, and be in good standing at the time of his election. In addition to the qualifications above described each of the officers named shall be a citizen of the United States and shall have resided within the state or territory two years next preceding his election.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 3. **Qualifications of officers.** — No person shall be eligible to the office of governor or lieutenant governor unless he shall have attained the age of thirty years at the time of his election; nor to the office of secretary of state, state auditor, superintendent of public instruction, or state treasurer, unless he shall have attained the age of twenty-five years; nor to the office of attorney general unless he shall have attained the age of thirty

years, and have been admitted to practice in the Supreme Court of the state or territory of Idaho, and be in good standing at the time of his election. In addition to the qualifications above described each of the officers named shall be a citizen of the United States and shall have resided within the state or territory two years next preceding his election."

It was amended, as proposed by S.L. 1947, p. 908, S.J.R. No. 6, and ratified at the general election in November 1948, to read as follows:

"§ 3. **Qualifications of officers.** — No

person shall be eligible to the office of governor or lieutenant governor unless he shall have attained the age of thirty (30) years at the time of his election; nor to the office of secretary of state, state auditor, or state treasurer, unless he shall have attained the age of twenty-five (25) years; nor to the office of attorney general unless he shall have attained the age of thirty (30) years, and have been admitted to practice in the Supreme Court of the state or territory of Idaho, and be in good standing at the time of his election. In addition to the qualifications above described each of the officers named shall be a citizen of the United States and shall have resided within the state or territory two (2) years next

preceding his election."

This section was amended by S.L. 1994, p. 1493, S.J.R. No. 109, § 3 and ratified at the general election November 8, 1994, to read as it now appears.

Comp. provisions: Mont. Art. 6, § 3.

Utah. Art. 7, § 3.

Wash. Art. 3, § 25.

Cited in: Taylor v. State, 62 Idaho 212, 109 P.2d 879 (1941); Langmeyer v. State, 104 Idaho 53, 656 P.2d 114 (1982).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 416; Vol. II, pp. 1414, 1907.

38 Am. Jur. 2d, Governor, § 2.

§ 4. Governor is commander of militia. — The governor shall be commander-in-chief of the military forces of the state, except when they shall be called into actual service of the United States. He shall have power to call out the militia to execute the laws, to suppress insurrection, or to repel invasion.

Comp. provisions: Cal. Art. 5, § 7.

Mont. Art. 6, § 13.

Ore. Art. 5, § 9.

Utah. Art. 7, § 4.

Wash. Art. 3, § 8.

Wyo. Art. 4, § 4.

Payment of Expenses.

The power given the governor by this section carries with it by implication the power to incur expenses necessarily incident to the operations of the troops called out. McConnel v. Gallet, 51 Idaho 386, 6 P.2d 143 (1931).

Auditor's certification that the adjutant-general's contingent fund was sufficient makes it unnecessary for the board of examiners to approve the claim for pay of national guardsmen called out by the governor. McConnel v. Gallet, 51 Idaho 386, 6 P.2d 143 (1931).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 417; Vol. II, p. 1414.

54 Am. Jur. 2d, Military, and Civil Defense, §§ 35, 36.

§ 5. Supreme executive power vested in governor. — The supreme executive power of the state is vested in the governor, who shall see that the laws are faithfully executed.

Cross ref. Exercise of gubernatorial responsibility through administrative departments, see "State Government and State Affairs," title 67.

Sec. to sec. ref. This section is referred to in § 67-802.

Cited in: Williams v. Koelsch, 67 Idaho 341, 180 P.2d 237 (1947).

Judicial Review of Removal of State Officer.

This section confers upon the governor the right to remove the fish and game commis-

sioner pursuant to subdiv. (e) of § 36-102. In reviewing the action of the governor the Supreme Court is limited to the single question of jurisdiction. The governor is the exclusive judge of the sufficiency of the proof of the charges and the court will only inquire whether there is any evidence to support his findings and order. Hawley v. Bottolfsen, 61 Idaho 101, 98 P.2d 634 (1940).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 417; Vol. II, p. 1414.

§ 6. Governor to appoint officers. — The governor shall nominate and, by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during the

recess of the senate, a vacancy occurs in any state or district office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of a justice of the supreme or district court, secretary of state, state controller, state treasurer, attorney general, or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, as provided by law, and the appointee shall hold his office until his successor shall be selected and qualified in such manner as may be provided by law.

Compiler's notes. As originally adopted this section provided as follows:

"§ 6. **Governor to appoint officers.** — The governor shall nominate and, by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during the recess of the senate, a vacancy occurs in any state or district office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of a justice of the Supreme or district court, secretary of state, state auditor, state treasurer, attorney general, or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, and the appointee shall hold his office until his successor shall be elected and qualified in such manner as may be provided by law."

It was amended as proposed by H.J.R. No. 4 (S.L. 1967, p. 1575) and ratified at the general election on November 5, 1968, to read as follows:

"§ 6. **Governor to appoint officers.** — The governor shall nominate and, by and with the consent of the senate, appoint all officers whose offices are established by this constitution, or which may be created by law, and whose appointment or election is not otherwise provided for. If during the recess of the senate, a vacancy occurs in any state or district office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office. If the office of a justice of the supreme or district court, secretary of state, state auditor, state treasurer, attorney general, or superintendent of public instruction shall be vacated by death, resignation or otherwise, it shall be the duty of the governor to fill the same by appointment, as provided by law, and the appointee shall hold his office until his successor shall be selected and qualified in such manner as may be provided by law."

This section was amended by S.J.R. No.

109, § 4 (S.L. 1994, p. 1493) and ratified at the general election November 8, 1994, to read as it now appears.

Cross ref. Allocation of all executive and administrative offices among and within not more than twenty departments, Art. 4, § 20.

Children's trust account board, appointment, § 39-6001.

Comp. provisions: Cal. Art. 5, § 5.

Mont. Art. 6, § 8.

Ore. Art. 5, § 16.

Utah. Art. 7, §§ 9, 10.

Wash. Art. 3, § 13.

Wyo. Art. 4, § 7.

Cited in: Winter v. Davis, 65 Idaho 696, 152 P.2d 249 (1944).

ANALYSIS

Appointments in general.

Consent of senate.

Power of legislature.

Vacancies.

Appointments in General.

Legislature, when creating any office by legislative act, may prescribe method of filling office and designate the officer, board, or body that shall make the appointment; in case of failure on the part of legislature to do so, the governor is vested by the constitution with appointive power. *Elliott v. McCrea*, 23 Idaho 524, 130 P. 785 (1913).

The legislature is within its constitutional rights in designating any person other than the governor to fill an office or in limiting power of governor in making appointments. *Ingard v. Barker*, 27 Idaho 124, 147 P. 293 (1915).

Provisions of §§ 59-904, 59-914 do not apply to filling of vacancy in office of state treasurer, since filling of vacancy in that office is expressly provided for in this section. *Moon v. Masters*, 73 Idaho 146, 247 P.2d 158 (1952).

In original proceeding brought by plaintiff for a writ of mandate for warrant payable to plaintiff for alleged salary as district judge of the 9th judicial district, the court held that the vacancy in the office involved, that of an additional office of district judge in and for the 9th judicial district created by Acts 1957, ch. 15, was not filled by plaintiff in the manner

provided for by law, and his claim for compensation was denied, he having served during the month of November, 1958, having been elected at the November general election to take office at the regular term commencing on the 5th day of January, 1959, such office previous to that date to be filled only by the governor upon appointment. *Tway v. Williams*, 81 Idaho 1, 336 P.2d 115 (1959).

Where an office is of legislative creation the legislature can modify, control or abolish it; and within these powers is embraced the right to change the mode of appointment to office. *Smylie v. Williams*, 81 Idaho 335, 341 P.2d 451 (1959).

Consent of Senate.

This section, in providing for appointment of officers by the governor with consent of the senate, applies only to officers for whose appointment no other provision is made by law, and is not infringed by S.L. 1899, p. 345, providing for the appointment of board of medical examiners by the governor without consent of the senate. In *re Inman*, 8 Idaho 398, 69 P. 120 (1902).

The legislature had the authority to give the governor power to appoint toll-bridge commissioners without the consent of the senate. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Power of Legislature.

The legislature may, in the exercise of its plenary power, create an office or offices not established by the constitution and not prohibited by either the federal or state constitution. *Smylie v. Williams*, 81 Idaho 335, 341 P.2d 451 (1959).

Vacancies.

Where the first appointee of governor resigned his office before the next general election, and governor made another and further appointment to fill vacancy, such subsequent appointee takes office subject to same provisions as original appointee. *Joy v. Gifford*, 22 Idaho 301, 125 P. 181 (1912).

Under this section, whenever a vacancy occurs in the office of justice of the Supreme Court, it becomes duty of governor to fill same by appointment. It is an absolute grant of appointive power to governor and does not depend upon legislative action or legislative sanction. The power given the governor is not limited or controlled in any manner by the provisions of art. 5, § 19. The words "his office" and "his successor" clearly indicate that the appointee succeeds to all the rights in the office held by original incumbent and that he shall continue to hold and exercise them until the time arrives for election of his successor in the manner provided by law, for the next succeeding term of the office in question. *Budge v. Gifford*, 26 Idaho 521, 144 P. 333 (1914).

Person appointed by governor to fill vacancy of state treasurer as result of death of elected official holds office for balance of term of elected official. *Moon v. Masters*, 73 Idaho 146, 247 P.2d 158 (1952).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 417; Vol. II, p. 1415.

38 Am. Jur. 2d, Governor, §§ 5-7.

81A C.J.S., States, §§ 84-87.

§ 7. The pardoning power. — Such board as may hereafter be created or provided by legislative enactment shall constitute a board to be known as the board of pardons. Said board, or a majority thereof, shall have power to remit fines and forfeitures, and, only as provided by statute, to grant commutations and pardons after conviction of a judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the state except treason or conviction on impeachment. The legislature shall by law prescribe the sessions of said board and the manner in which application shall be made, and regulate proceedings thereon, but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state.

The governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the board of pardons; and such board shall at such session continue or determine such respite or reprieve, or they may commute or pardon the offense, as herein provided. In cases of conviction for treason the governor shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct its execution, or grant further reprieve.

Compiler's notes. As originally adopted, this section provided as follows:

“§ 7. **Board of pardons.** — The governor, secretary of state, and attorney general shall constitute a board to be known as the board of pardons. Said board, or a majority thereof, shall have power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the state except treason or conviction on impeachment. The legislature shall by law prescribe the sessions of said board and the manner in which application shall be made, and regulate proceedings thereon; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing in the office of the secretary of state.

“The governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the board of pardons; and such board shall at such session continue or determine such respite or reprieve, or they may commute or pardon the offense, as herein provided. In cases of conviction for treason the governor shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the legislature, at each regular session, each case of remission of fine

or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of remission, commutation, pardon or reprieve, with the reasons for granting the same, and the objection, if any, of any member of the board made thereto.”

It was amended, as proposed by S.L. 1945, p. 400, S.J.R. No. 3, and ratified at the general election in November 1946, to read as follows:

“§ 7. **The pardoning power.** — From and after July 1, 1947, such board as may hereafter be created or provided by legislative enactment shall constitute a board to be known as the board of pardons. Said board, or a majority thereof, shall have power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, either absolutely or upon such conditions as they may impose in all cases of offenses against the state except treason or conviction on impeachment. The legislature shall by law prescribe the sessions of said board and the manner in which application shall be made, and regulate proceedings thereon, but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except by the decision of a majority of said board, after a full hearing in open session, and until previous notice of the time and place of such hearing and the release applied for shall have been given by publication in some newspaper of general circulation at least once a week for four weeks. The proceedings and decision of the board shall be reduced to writing and with their reasons for their action in each case, and the dissent of any member who may disagree, signed by him, and filed, with all papers used upon the hearing, in the office of the secretary of state.

“The governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the state, except treason or conviction on impeachment, but such respites or reprieves shall not extend beyond the next session of the board of pardons; and such board shall at such session continue or determine such respite or reprieve, or they

may commute or pardon the offense, as herein provided. In cases of conviction for treason the governor shall have the power to suspend the execution of the sentence until the case shall be reported to the legislature at its next regular session, when the legislature shall either pardon or commute the sentence, direct its execution, or grant a further reprieve."

This section was amended as proposed by S.L. 1986, p. 867, S.J.R. No. 107, and ratified at the general election November 4, 1986 to read as it now appears.

Cross ref. Governor's power to grant respite or reprieves, § 20-240.

State board of correction sitting as board of pardons, § 20-213.

Comp. provisions: Mont. Art. 6, § 12.

Utah. Art. 7, § 12.

Cited in: State v. Wilson, 105 Idaho 669, 672 P.2d 237 (Ct. App. 1983); Flores v. State, 109 Idaho 182, 706 P.2d 71 (Ct. App. 1985).

ANALYSIS

Commutation of sentences.

Conditional pardons.

Correction of sentence.

1946 amendment.

Parole.

Powers in general.

Retroactive provisions.

Commutation of Sentences.

This section clearly provides that a commutation may be granted by a majority of the board of pardons only after a full hearing in open session preceded by publication of notice in a newspaper of general circulation once a week for four weeks. *Miller v. Meredith*, 59 Idaho 385, 83 P.2d 206 (1938).

Under this section and §§ 20-211 and 20-213, the Board of Correction, acting through the Commission of Pardons and Parole, has the power to commute fixed sentences. *State v. Storey*, 109 Idaho 993, 712 P.2d 694 (Ct. App. 1985).

Where discharges granted to petitioners were in fact commutations because they shortened the term of the sentences imposed by the court, since the discharges did not comply with the procedures set forth in this section they were void. *Bates v. Murphy*, 118 Idaho 239, 796 P.2d 116 (1990).

The authority to commute a sentence imposed by the district court is vested in the Commission of Pardons and Parole and defendant's argument that commission's action in commuting his escape sentence to run concurrently with his underlying sentence violated § 18-2505 fails because this section which existed at the time of the commission's action in this case, did not place a limitation upon the commission's commutation power through reference to statutory mandates. *State v.*

Beason, 119 Idaho 103, 803 P.2d 1009 (Ct. App. 1991).

Conditional Pardons.

Board of pardons may attach such conditions as they see fit to a pardon, commutation, or parole, so long as they are not immoral, illegal, or impossible of performance, and provided that they are to be kept or performed, or complied with, during term for which prisoner was sentenced, but they can not require convict who has broken his parole to undergo imprisonment, after expiration of the time fixed by the judgment of conviction for termination of such imprisonment, by requiring him to serve an additional time equal to that during which he was out on parole. In *re Prout*, 12 Idaho 494, 86 P. 275, 5 L.R.A. (n.s.) 1064, 10 Ann. Cas. 199 (1906).

Correction of Sentence.

State board of correction did not have power or authority to increase sentence of defendant from one to five years for conviction of the crime of issuing a check without funds where district court sentenced the defendant for one year instead of the statutory period of five years, since the district court did not correct the sentence, and the state did not file a motion to correct the sentence or take an appeal from said sentence. *Spanton v. Clapp*, 78 Idaho 234, 299 P.2d 1103 (1956).

1946 Amendment.

The 1946 amendment to Const., Art. 4, § 7 does not apply to offenses or convictions prior thereto, hence appellant who started to serve sentence of not less than 10 or more than 12 years on May 6, 1942 did not lose substantive rights. *Ex parte Dalton*, 73 Idaho 542, 255 P.2d 333 (1953).

Parole.

Though only the executive branch has the power to grant commutations and pardons, parole is within the legislative scope of establishing suitable punishment for crimes, since a parole does not pardon a convicted party of his guilt or commute any portion of his sentence. *Standlee v. State*, 96 Idaho 849, 538 P.2d 778 (1975).

Inasmuch as the powers of pardon and commutation are separate and distinct from the power to grant parole, § 19-2513A (repealed) was intended solely to limit the power of parole and did not restrict either the power of pardon or commutation. *State v. Rawson*, 100 Idaho 308, 597 P.2d 31 (1979).

Although only the Commission for Pardons and Parole may impose substantive, rehabilitative conditions of parole, the Board of Correction may recommend substantive conditions, and the Commission may delegate to its executive director the authority to act in its behalf in approving the Board's recommended

parole conditions. *Mellinger v. Idaho Dep't of Cors.*, 114 Idaho 494, 757 P.2d 1213 (Ct. App. 1988).

The Commission for Pardons and Parole's act of revoking the defendant's parole for violating conditions recommended by the Board of Correction and approved by the Commission's executive director could be inferred as a ratification of the director's approval. *Mellinger v. Idaho Dep't of Cors.*, 114 Idaho 494, 757 P.2d 1213 (Ct. App. 1988).

When the Commission of Pardons and Parole is exercising the parole function, as distinguished from its commutation and pardon-ing powers, it is exercising powers "delegated to it by the board." *Carman v. State, Comm'n of Pardons & Parole*, 119 Idaho 642, 809 P.2d 503 (1991).

Powers in General.

The board of pardons, created by the constitution, has power to remit fines and forfeitures, and to grant commutations and pardons after conviction and judgment, and the governor has the power to grant respites and reprieves. *State v. Iverson*, 79 Idaho 25, 310 P.2d 803 (1957).

Retroactive Provisions.

Provision in Acts 1947, ch. 53, § 29 (former § 20-229) requiring a hearing before the board of correction before revocation of any good time, was retroactive, even though Good Time Statute was repealed by Acts 1947, ch. 53, § 46. *Ex parte Dalton*, 72 Idaho 451, 243 P.2d 594 (1952).

Opinions of Attorney General. By statute, a majority of the Commission for Pardons and Parole must vote in favor of an inmate parole application before parole can be granted. If two of the five commissioners disqualify themselves, then the remaining three must act unanimously in favor of the release. OAG 83-12.

A commutation hearing on inmates with the death sentence may be conducted prior to reprieve by the governor. OAG 84-8.

The Commission for Pardons and Parole has the authority to commute a death penalty, to commute a death sentence to a fixed life

term, to commute an indeterminate sentence to a lesser fixed sentence, and to commute a fixed sentence to a lesser fixed sentence. OAG 84-8.

The Commission for Pardons and Paroles may not conduct a commutation hearing absent a petition submitted by the inmate or on behalf of the inmate. OAG 84-8.

As a statutory entity with authority to make decisions concerning paroles, pardons, and commutations, the Commission of Pardons and Parole is subject to the Open Meeting Law and is required to open all meetings to the public except those conducted in executive session. OAG 85-9.

The Board of Correction has no authority to do an outright early discharge of prisoners; the power to release prisoners is vested in the Commission of Pardons and Parole, which may release prisoners on parole, or pardon or commute their sentences. OAG 87-5.

As to sentences imposed for crimes committed prior to the effective date of the Unified Sentencing Act, February 1, 1987, the Commission of Pardons and Parole may, pursuant to properly enacted rules and regulations, parole an inmate who is serving an indeterminate sentence and who has one or more consecutive sentences remaining to be served; when paroled, such an inmate would have a dual status as a parolee on the first sentence and as an inmate on the consecutive sentence or sentences. OAG 87-9.

When two sentences are ordered to be served consecutively, and when they both contain fixed and indeterminate terms, the fixed sentences must be served first, one after the other. Then, the parole commission shall determine when and if parole will be granted at any time during the pendency of the consecutive indeterminate terms in a single proceeding. OAG 92-1.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 421; Vol. II, p. 1415.

59 Am. Jur. 2d, Pardon and Parole, § 14.

Revocation of order commuting state criminal sentence. 88 A.L.R.5th 463.

67A C.J.S., Pardon and Parole, §§ 6-7.

§ 8. Governor may require reports — Messages to legislature. —

The governor may require information in writing from the officers of the executive department upon any subject relating to the duties of their respective offices, which information shall be given upon oath whenever so required; he may also require information in writing, at any time under oath, from all officers and managers of state institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions, and may, at any time he deems it necessary, appoint a committee to investigate and report to him upon the condition of any executive office or state institution. The governor shall at the commence-

ment of each session, and from time to time, by message, give to the legislature information of the condition of the state, and shall recommend such measures as he shall deem expedient. He shall also send to the legislature a statement, with vouchers, of the expenditures of all moneys belonging to the state and paid out by him. He shall also, at the commencement of each session, present estimates of the amount of money required to be raised by taxation for all purposes of the state.

Comp. provisions: Mont. Art. 6, §§ 9, 15.

Cited in: Lyons v. Bottolfsen, 61 Idaho 281, 101 P.2d 1 (1940).

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 421; Vol. II, p. 1415.

§ 9. Extra sessions of legislature. — The governor may, on extraordinary occasions, convene the legislature by proclamation, stating the purposes for which he has convened it; but when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation; but may provide for the expenses of the session and other matters incidental thereto. He may also, by proclamation, convene the senate in extraordinary session for the transaction of executive business.

Comp. provisions: Cal. Art. 4, § 3.

Mont. Art. 6, § 11.

Ore. Art. 5, § 12.

Utah. Art. 7, § 6.

Wash. Art. 3, § 7.

Cited in: Goodnight v. Moody, 3 Idaho 7, 26 P. 121 (1891); State Water Conservation Bd. v. Enking, 56 Idaho 722, 58 P.2d 799 (1936); Vernon v. Omark Indus., 113 Idaho 358, 744 P.2d 86 (1987). *

ANALYSIS

Discretion of governor.

Sufficiency of proclamation.

Discretion of Governor.

Court can not determine judicially whether extraordinary session is within governor's discretion. Utah Power & Light Co. v. Pfost, 52 F.2d 226 (D. Idaho 1931).

The determination as to whether facts exist such as to constitute an extraordinary occasion is for the governor alone to determine. Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

Sufficiency of Proclamation.

The subject of the caravan act was sufficiently specified in the proclamation covering the special session of the legislature which enacted it and the act does not violate this section. Geo. B. Wallace, Inc. v. Pfost, 57 Idaho 279, 65 P.2d 725 (1937).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 421; Vol. II, p. 1415.

16 C.J.S., Constitutional Law, § 206.

§ 10. Veto power. — Every bill passed by the legislature shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, he shall return it with his objections to the house in which it originated, which house shall enter the objections at large upon its journals and proceed to reconsider the bill. If then two-thirds ($\frac{2}{3}$) of the members present agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered: and if approved by two-thirds ($\frac{2}{3}$) of the members present in that house, it shall become a law, notwithstanding the objections of the governor. In all such cases the vote of each house shall be determined by yeas and nays, to be entered on the journal. Any bill which shall not be returned by the governor to the

legislature within five (5) days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it, unless the legislature shall, by adjournment, prevent its return, in which case it shall be filed, with his objections, in the office of the secretary of state within ten (10) days after such adjournment (Sundays excepted) or become a law.

Comp. provisions: Mont. Art. 6, § 10.

Ore. Art. 5, § 15-b.

Utah. Art. 7, § 8.

Wash. Art. 3, § 12.

Wyo. Art. 4, § 8.

Cited in: Idaho Power & Light Co. v. Blomquist, 26 Idaho 222, 141 P. 1083, 1916E Ann. Cas. 282 (1914); Griffith v. Van Deusen, 31 Idaho 136, 169 P. 929 (1917).

ANALYSIS

In general.

Amendments.

Journal entries.

Presentation to governor.

Time for.

Validity of veto.

In General.

This section requires that an act be presented to the governor for his approval or rejection, or to permit it to become a law without his approval. In passing upon bills presented, the governor acts in a legislative capacity. His consideration thereof is an essential element of legislative process. State ex rel. Brassey v. Hanson, 81 Idaho 403, 342 P.2d 706 (1959).

Amendments.

Where bill receives amendment in both houses of the legislature but is presented to governor unamended and signed by him, bill as amended can not be a law of the state. Katerndahl v. Daugherty, 30 Idaho 356, 164 P. 1017 (1917).

Where the enrolling clerk erroneously copied into Sess. Laws 1959, ch. 299, the figure "3.5" instead of "3" in § 24, subd. (a) (§ 63-3024) as the House amendment provided, but all three of the divisions of legislative power — the House, the Senate, and the governor — approved the house amendment and made it a part of the act, the bill was constitutionally enacted as amended by the House. State ex rel. Brassey v. Hanson, 81 Idaho 403, 342 P.2d 706 (1959).

Journal Entries.

The framers of the Constitution evidently intended to make a distinction between the words "enter the objection at large upon the journal" as used in this section and the words "enter on their journals" as used in art. 20, § 1. Mundell v. Swedlund, 58 Idaho 209, 71 P.2d 434 (1937).

Presentation to Governor.

Where a substantial portion of a bill was affirmatively approved by the legislature but was inadvertently omitted in the enrolling process and was not presented to the governor for his approval, because of the inadvertent omission, the omitted portion did not become law but, as it was separable from the other matters in the bill, the omission did not affect the remaining portion of the bill. Worthen v. State, 96 Idaho 175, 525 P.2d 957 (1974).

The state legislature can enact no law except by the constitutionally prescribed process, which requires that every bill, before it becomes law, be presented to the governor. Idaho Power Co. v. State, 104 Idaho 570, 661 P.2d 736 (1983).

Time for.

The governor has 10 full days from the date of presentment in which to consider bills presented to him after adjournment of the legislature. Cenarrusa v. Andrus, 99 Idaho 404, 582 P.2d 1082 (1978).

Since the governor has ten full days from the date of presentment in which to consider bills presented to him after adjournment of the legislature, even though the legislature adjourned on March 19, 1976, where S.B. 1428, ch. 366 which attempted to amend § 67-1401 and enact a § 67-1403 was presented to the governor on March 23, 1976, he had until April 3, 1976 to act on such bill, and his veto of said bill on April 1, 1976 was effectual and such bill did not become law. Cenarrusa v. Andrus, 99 Idaho 404, 582 P.2d 1082 (1978).

Validity of Veto.

In absence of valid veto, and due observance of provisions herein, bill as originally passed by legislature becomes law. Wheeler v. Gallet, 43 Idaho 175, 249 P. 1067 (1926).

Where governor attempted to reduce appropriation by veto not in accordance with his powers under § 11 of this article, appropriation stands as provided in bill. Wheeler v. Gallet, 43 Idaho 175, 249 P. 1067 (1926).

Opinions of Attorney General. Despite the presumption in favor of a statute's constitutionality, the provision in § 42-1503 that purports to authorize the legislature to reject, by concurrent resolution, a minimum stream flow approved by the Director of the state Department of Water Resources contravenes Const., art. 2, § 1, art. 3, §§ 1 and 15, and this section. OAG 87-6.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 421; Vol. II, p. 1415.

16 Am. Jur. 2d, Constitutional Law, § 301.
73 Am. Jur. 2d, Statutes, §§ 69-76.
16 C.J.S., Constitutional Law, § 218.
82 C.J.S., Statutes, §§ 52-58.

§ 11. Disapproval of appropriation bills. — The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items, and the part or parts approved shall become a law and the item or items disapproved shall be void, unless enacted in the manner following: If the legislature be in session, he shall within five (5) days transmit to the house within which the bill originated a copy of the item or items thereof disapproved, together with his objections thereto, and the items objected to shall be separately reconsidered, and each item shall then take the same course as is prescribed for the passage of bills over the executive veto.

Comp. provisions: Mont. Art. 6, § 10.

Ore. Art. 5, § 15-a.

Wyo. Art. 4, § 9.

Cited in: Lyons v. Bottolfson, 61 Idaho 281, 101 P.2d 1 (1940).

ANALYSIS

Blanket appropriations.

Considered item.

Construction.

Items of appropriations.

Blanket Appropriations.

The state highway commission act does not contravene this section by making a promiscuous blanket appropriation to all the bureaus and branches* of the department of public works. State ex rel. Taylor v. Taylor, 58 Idaho 656, 78 P.2d 125 (1938).

Considered Item.

Under this section governor must either approve or reject each individual and distinct item in appropriation bill. He cannot veto part of item, or reduce entire appropriation. Wheeler v. Gallet, 43 Idaho 175, 249 P. 1067 (1926).

A governor may not veto a condition or proviso of an appropriation while allowing the appropriation itself to stand because that would amount to affirmative legislation by executive edict. Cenarrusa v. Andrus, 99 Idaho 404, 582 P.2d 1082 (1978).

The item veto power was intended to and does apply solely to distinct money items in appropriation bills. Cenarrusa v. Andrus, 99 Idaho 404, 582 P.2d 1082 (1978).

Construction.

The language empowering the governor to "disapprove of any item or items" of an appropriation bill means that he may disapprove only items of appropriation of money. Cenarrusa v. Andrus, 99 Idaho 404, 582 P.2d 1082 (1978).

Items of Appropriations.

This section does not require any particular appropriation to be broken down into any particular number of items. Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 421; Vol. II, p. 1415.

§ 12. Lieutenant governor to act as governor. — In case of the failure to qualify, the impeachment, or conviction of treason, felony, or other infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant governor.

Comp. provisions: Cal. Art. 5, § 10.

Mont. Art. 7, § 14.

Wash. Art. 3, § 10.

Sec. to sec. ref. This section is referred to in § 67-809.

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 421; Vol. II, p. 1415.

38 Am. Jur. 2d, Governor, § 12.

81A C.J.S., States, §§ 88, 89.

§ 13. Lieutenant governor is president of senate. — The lieutenant governor shall be president of the senate, but shall vote only when the senate is equally divided. In case of the absence or disqualification of the lieutenant governor from any cause which applies to the governor, or when he shall hold the office of governor, then the president pro tempore of the senate shall perform the duties of the lieutenant governor until the vacancy is filled or the disability removed.

Comp. provisions: Cal. Art. 5, § 9.
Wash. Art. 3, § 16.
Sec. to sec. ref. This section is referred to in § 67-809.

ANALYSIS

Construction.
Intent.
 When vote may be cast.

Construction.
 Constitution Art. 3, § 9, Art. 3, § 10 and this section were designed to function together to ensure that our Senate functions efficiently and productively. *Sweeney v. Otter*, 119 Idaho 135, 804 P.2d 308 (1990).
 In 1967, § 67-404a was passed, for the first time separating an organizational session from the regular session of the Idaho legislature; this procedure was not part of the legislative process designed by the drafters of the Idaho Constitution in 1889, and it is not helpful in analyzing the purpose of the tie breaking purpose provided in art. 4, § 13. *Sweeney v. Otter*, 119 Idaho 135, 804 P.2d 308 (1990).

Together Const. Art. 3, § 9, Art. 3, § 10, and this section function to provide a framework for the efficient operation of the Senate. There is no conflict among these constitutional provisions, as neither art. 3, § 9 nor art. 3, § 10 limits, restricts or modifies the authority for the Lieutenant Governor to vote when the Senate is equally divided as expressly granted in this section. To hold that the grant of authority to the Lieutenant Governor to vote when the Senate is equally divided must be repeated in each constitutional section dealing with the authority of the Senate to act, would render the authority conferred in this section meaningless. *Sweeney v. Otter*, 119 Idaho 135, 804 P.2d 308 (1990).

§ 14. President pro tempore to act as governor. — In case of the failure to qualify in his office, death, resignation, absence from the state, impeachment, conviction of treason, felony or other infamous crime, or disqualification from any cause, of both governor and lieutenant governor, the duties of the governor shall devolve upon the president of the senate pro tempore, until such disqualification of either the governor or lieutenant governor be removed, or the vacancy filled; and if the president of the

Intent.
 The drafters of the state constitution intended the Lieutenant Governor to vote in the case of a tie, and included a clause in this section for that reason; this section does not restrict the questions on which the Lieutenant Governor may cast this tie breaking vote. *Sweeney v. Otter*, 119 Idaho 135, 804 P.2d 308 (1990).

When Vote May Be Cast.
 This section authorizes the Lieutenant Governor to vote any time the Senate is equally divided. *Sweeney v. Otter*, 119 Idaho 135, 804 P.2d 308 (1990).

Opinions of Attorney General. The Lieutenant Governor is expressly authorized by this section to cast a vote when the Senate is equally divided. This express power does not violate the separation of powers provisions of Const. Art. 2, § 1; nor is there any other legal basis to limit the Lieutenant Governor's vote-casting authority. OAG 90-7.

Since the Lieutenant Governor was given the casting vote to secure an orderly resolution of the Senate's business and this power is expressly granted in the Idaho Constitution and has no apparent limitation, based upon this express authority and the lack of any articulated limitations placed thereon, the Lieutenant Governor may cast the tie-breaking vote during the organizational session of the Idaho Senate if the members present are equally divided in their choice of a president pro tem. OAG 90-7.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 421; Vol. II, p. 1415.
 72 Am. Jur. 2d, States, Territories, and Dependencies, § 39.
 81A C.J.S., States, § 131.

senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the house.

Comp. provisions: Ore. Art. 5, § 8a.

Utah. Art. 7, § 11.

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 421; Vol. II, p. 1415.

§ 15. Great seal of the state. — There shall be a seal of this state, which shall be kept by the secretary of state and used by him officially, and shall be called "The great seal of the state of Idaho." The seal of the territory of Idaho, as now used, shall be the seal of the state until otherwise provided by law.

Cross ref. Seal of state, § 59-1005.

Comp. provisions: Ore. Art. 6, § 3.

Utah. Art. 7, § 20.

Wash. Art. 3, § 18.

Wyo. Art. 4, § 15.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 422; Vol. II, p. 1415.

§ 16. Grants and permissions. — All grants and permissions shall be in the name and by the authority of the state of Idaho, sealed with the great seal of the state, signed by the governor, and countersigned by the secretary of state.

Comp. provisions: Utah. Art. 7, § 19.

Wash. Art. 3, § 15.

Cited in: Barber Lumber Co. v. Gifford, 25 Idaho 654, 139 P. 557 (1914).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 422; Vol. II, p. 1415.

§ 17. Accounts and reports of officers. — An account shall be kept by the officers of the executive department and of all public institutions of the state of all moneys received by them severally, from all sources, and for every service performed, and of all moneys disbursed by them severally, and a semi-annual report thereof shall be made to the governor, under oath; they shall also, at least twenty days preceding each regular session of the legislature, make full and complete reports of their official transactions to the governor, who shall transmit the same to the legislature.

Cited in: Lyons v. Bottolfson, 61 Idaho 281, 101 P.2d 1 (1940).

Opinions of Attorney General. The Idaho Commission for Pardons and Parole does have the power to commute a sentence during a fixed term under the Unified Sentencing Act. OAG 94-3.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 422; Vol. II, p. 1415.

§ 18. Board of examiners. — The governor, secretary of state, and attorney general shall constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law; provided, that in the administration of moneys in cooperation with the federal government the legislature may prescribe any method of disburse-

ment required to obtain the benefits of federal laws. And no claim against the state, except salaries and compensation of officers fixed by law, shall be passed upon by the legislature without first having been considered and acted upon by said board.

Compiler's notes. As originally adopted, this section provided as follows:

“§ 18. Board of prison commissioners and of examiners. — The governor, secretary of state, and attorney general shall constitute a board of state prison commissioners, which board shall have such supervision of all matters connected with the state prison as may be prescribed by law. They shall also constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. And no claim against the state, except salaries and compensation of officers fixed by law, shall be passed upon by the legislature without first having been considered and acted upon by said board.”

It was amended, as proposed by S.L. 1939, p. 671, S.J.R. No. 7, and ratified at the general election in November, 1940, to read as follows:

“§ 18. Board of prison commissioners and of examiners. — The governor, secretary of state, and attorney general shall constitute a board of state prison commissioners, which board shall have such supervision of all matters connected with the state prison as may be prescribed by law. They shall also constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law: Provided, that in the administration of moneys in cooperation with the federal government the legislature may prescribe any method of disbursement required to obtain the benefits of federal laws. And no claim against the state, except salaries and compensation of officers fixed by law, shall be passed upon by the legislature without first having been considered and acted upon by said board.”

The section was again amended, as proposed by S.L. 1945, p. 398, H.J.R. No. 3, and ratified at the general election in November 1946, to read as it now appears.

Cross ref. The board of examiners created by this section is styled the “state board of examiners.” The governor is chairman of the board and the auditor is ex officio secretary of the board (§ 67-2001).

Sec. to sec. ref. This section is referred to in § 67-2001.

Cited in: *Kroutinger v. Board of Exmrs.*, 8 Idaho 463, 69 P. 279 (1902); *Ackley v. Perrin*, 10 Idaho 531, 79 P. 192 (1905); *Davis v. State*, 30 Idaho 137, 163 P. 373, 1918D Ann. Cas. 911

(1917); *Brady v. Place*, 41 Idaho 747, 242 P. 314 (1925);, 41 Idaho 753, 243 P. 654 (1926); *O'Malley v. Parsons*, 59 Idaho 635, 85 P.2d 739 (1938); *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939); *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

ANALYSIS

Approval of loaning of state funds.
Construction in general.
Discretion of board.
Ministerial duty.
Powers of board.
Presentment condition precedent.
Procedure.
State university.
Unemployment compensation.
Waiver of presentment.

Approval of Loaning of State Funds.

Section 42-1756, which authorizes the loaning of state funds without expressly requiring the approval of the state board of examiners, does not violate this section because approval by the state board of examiners is provided for by the Constitution and need not be expressly restated in the statute. *Nelson v. Marshall*, 94 Idaho 726, 497 P.2d 47 (1972).

Since approval of loans by the board of examiners was provided by this section of this article and the constitutional mandate need not be expressly restated in the statute, § 42-1756 authorizing loaning of state fund did not violate the constitutional provision. *Nelson v. Marshall*, 94 Idaho 726, 497 P.2d 47 (1972).

Construction in General.

Where constitutional provision is fairly open to two constructions, one of which will carry out and the other defeat some great public purpose for which it was designed, former construction should be adopted. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921).

Claims under this section must be strictly legal claims, but it is not ultra vires for irrigation district to agree to accept certain sums from state for past outlays and for future indebtedness incident to maintenance of project as whole. *Gem Irrigation Dist. v. Gallet*, 43 Idaho 519, 253 P. 128 (1927).

It is not necessary for a statute to provide that a claim against the state be presented and allowed by the state board of examiners for the reason that this section provides for such procedure for all claims against the state. *Ada County v. Wright*, 60 Idaho 394, 92 P.2d 134 (1939).

The validity of a statute creating the office of state comptroller can not be upheld on the theory that, notwithstanding the term, "state auditor," within the Constitution impliedly includes the powers and duties theretofore vested in the territorial "controller," this section constituting the governor, secretary of state, and attorney-general as a board of examiners deprives the state auditor of the principal functions of his office, since the state board of examiners is a "tribunal" and not a "board of auditors," and, hence, such constitutional provision does not confer upon the board powers and duties conferred upon the state auditor. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

The actual work of preparing legislative journals, inspecting them, completing the enrollment of bills and indexing laws, resolutions, etc., and taking an inventory of legislative furniture is not "germane" to the office of speaker of the house or lieutenant governor as president of the senate, but the employing of clerical help and supervising employees of the legislature in the performance of their work is "germane" to such offices, as regards the validity of statutes providing further compensation for the speaker of the house and lieutenant governor as president of the senate for services performed after adjournment of a session. *State ex rel. Wright v. Gossett*, 62 Idaho 521, 113 P.2d 415 (1941).

This section prohibits the payment of claims against the state, except salaries and compensation of officers fixed by law, unless examined by the board of examiners, and former law relating to appropriation of moneys in the highway fund, recognized the superior constitutional power and duty of the board of examiners to examine claims. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

The legislature in the exercise of its authority to prescribe "such other duties" under this section of the Constitution, has seen fit to prescribe the duty of examination of claims by the board of examiners and its authority so exercised is within the scope of and in harmony with the quoted provision of the Constitution. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

No conflict exists between this section and Art. 5, § 10 of the Constitution since this section clothes named officers such as the board of examiners with power to examine claims against the state while Art. 5, § 10 clothes the Supreme Court with original jurisdiction to hear claims against the state, its decision to be recommendatory to the legislature; thus in a case where the board allows such a claim there is no necessity to go into court, but if the board rejects a claim, then the court may assume jurisdiction to determine the merits of the claim. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Discretion of Board.

If the board refuses to act on a matter upon which law requires it to act, court may compel action but can not direct the board how it shall act in a particular case. *Pyke v. Steunenberg*, 5 Idaho 614, 51 P. 614 (1897).

The Supreme Court is without jurisdiction to command how board of examiners shall exercise its power to act upon claims against the state conferred by this section. *Curtis v. Moore*, 38 Idaho 193, 221 P. 133 (1923).

State board is created with full power and jurisdiction to pass upon all claims against state, except those specifically excepted by constitution, and no court or other tribunal is authorized to set aside or reverse such action. *Gem Irrigation Dist. v. Gallet*, 43 Idaho 519, 253 P. 128 (1927).

Board's discretion is absolute. It is constitutionally vested with sole and exclusive power to determine allowance or disallowance of claims. *Gem Irrigation Dist. v. Gallet*, 43 Idaho 519, 253 P. 128 (1928).

The legislature has no more jurisdiction to direct or control the action of the board of examiners than the court has, since all three bodies, the legislature, the board of examiners and the Supreme Court, derive their respective powers from the same instrument. *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

The state board of examiners is a tribunal and not a board of auditors. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

If the legislature has not previously appropriated moneys for payment of the item for which a claim has been submitted, then the board of examiners may recommend or refuse to recommend that it be submitted to the succeeding session of the legislature for payment. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Ministerial Duty.

If the amount of a claim has been fixed or settled by lawful contract or by authority of the department head of a state agency or other person authorized by law to fix the same, then the board of examiners exercises only a ministerial function in examining and approving the claim for paying after having determined that the claim is proper as to form, certification and chargeability against the appropriation. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

When there is no question as to form, certification and chargeability of a claim against an appropriation, then it becomes the duty of the board of examiners to examine and approve such a claim for payment. For, to act otherwise would be in an arbitrary, capricious, oppressive and wanton manner far

above and beyond the power vested in such board by our Constitution and in such a case mandamus will lie to compel the board of examiners to perform its ministerial duty in the premises. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Powers of Board.

Board has power to examine all claims except salaries of officers fixed by law, and perform such other duties as may be prescribed by law, but has no power to conclusively decide that there is appropriation available to pay claims. *Herrick v. Gallet*, 35 Idaho 13, 204 P. 477 (1922).

Board may approve claim for pay of national guardsman called out by governor without a certificate from the auditor that there are funds in the adjutant general's contingent fund sufficient to pay the claim. *McConnel v. Gallet*, 51 Idaho 386, 6 P.2d 143 (1931).

The claims of any board, bureau, or commission, if constituting an arm of the state performing only governmental functions, must be examined and approved before payment by the constitutional board of examiners. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

The legislature is empowered to create a board, commission, bureau, or department, such as a state water conservation board, attempted to be created by S.L. 1935 (1st E.S.), ch. 60 (unconstitutional), and arm it with administration and governmental powers, such as power to make surveys and investigations as to water supply, waste and loss, and methods of conservation, but this is the extent of the power to so create. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

The legislature cannot create the office of comptroller under this section. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

The authority of the board of examiners as to claims based on an obligation authorized by the legislature against a specific appropriation by the legislature is limited to determining whether the claims are in proper form, properly certified to the state auditor, whether chargeable against such appropriation, and whether there are funds remaining in the appropriation for such payment; the board cannot veto an act of the legislature or reverse the policy declared therein by refusing to approve claims properly presented.

Rich v. Williams, 81 Idaho 311, 341 P.2d 432 (1959); *Padgett v. Williams*, 82 Idaho 114, 350 P.2d 353 (1960).

Where the board of highway directors was empowered by § 40-120 to hire legal counsel of its own choosing and salaries were authorized against a specific appropriation, the board of examiners was limited to determining that the claim for payment of its legal counsel was in the proper form, properly certified to the state auditor by the department of highways, and chargeable against the appropriation. *Padgett v. Williams*, 82 Idaho 28, 348 P.2d 944 (1960).

The state insurance fund, not being state money, and claims against it not being claims against the state, the state board of examiners has no power or jurisdiction over the expenditure or disbursements thereof, except such as is given to it by the legislature. *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

Claims against the water reserve board are not claims against the state, would not be paid from state funds, and therefore are not subject to the jurisdiction of the state board of examiners. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Presentment Condition Precedent.

Claim arising out of a contract for construction of a state wagon road which stipulates for final payment when the contract is executed to the satisfaction of commissioners and board of examiners must be submitted for the approval of board of examiners before auditor can be required to issue his warrant therefor. *Winters v. Ramsey*, 4 Idaho 303, 39 P. 193 (1895).

State board of examiners may disallow, in whole or in part, any claim presented by state officer for services for clerk hire in his said office. *Bragaw v. Gooding*, 14 Idaho 288, 94 P. 438 (1908).

This section grants to state board of examiners power to examine all claims against the state, except salaries or compensation of officers fixed by law, and a legislative enactment attempting to provide for the disbursement of funds belonging to the state in payment of claims without such examination is void. *Epperson v. Howell*, 28 Idaho 338, 154 P. 621 (1916).

All claims of whatever character against the state must be submitted to the board. *State v. National Sur. Co.*, 29 Idaho 670, 161 P. 1026, 2 A.L.R. 251 (1916).

The act creating the state water conservation board, in so far as it authorizes the board to handle its own finances without audit by the board of examiners, violates this section. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho*

Dep't of Water Admin., 96 Idaho 440, 530 P.2d 924 (1974), and Idaho Water Resource Bd. v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976).

The Supreme Court will not, and the legislature can not, pass on claims against the state until passed upon by the board of examiners, and a legislative attempt so to do is ineffectual and void. *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

Session Laws 1955, ch. 277, which appropriated the sum of \$100,000 to apply on 1950 Dormitory Revenue Bond Issue of Northern Idaho College (now Lewis-Clark Normal School) was not unconstitutional on the ground that the law required the state treasurer to disburse funds without examination by state board of examiners as a claim against the state, since the prior bond issue was not a claim against the state prior to enactment of law, and none exists or can come into existence against the state by reason of the enactment. *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

The Supreme Court could not grant a writ of mandate directing the state auditor to issue certain warrants chargeable against the highway fund, simply because the claims involved had not been presented to the board of examiners as required. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

Claims for publication of legal notices against the highway funds must first be presented to the board of examiners for examination, as well as other claims against the highway fund, excepting salary or compensation of officers fixed by law as required by this section. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

Procedure.

Claim against the Albion state normal school is a claim against the state; and it was the duty of claimant, if the board of trustees of the state normal school failed to allow their claim, to present same to the state board of examiners; if there disallowed, then to have brought action in the Supreme Court for a

recommendatory judgment. *Thomas v. State*, 16 Idaho 81, 100 P. 761 (1909), overruled on other grounds, *Grant Constr. Co. v. Burns*, 92 Idaho 408, 483 P.2d 1005 (1968).

State University.

To hold that this section confers on board of examiners power to pass upon claims against board of regents would make latter board subservient to former and, in final analysis, operate to deprive such board of control and direction of funds and appropriations of university. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921).

This section confers no power on state board of examiners to pass upon claims against board of regents of state university. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921).

Unemployment Compensation.

Claims for benefits under the unemployment compensation law are "claims against the state" within this section and must be approved by the state board of examiners. *State ex rel. Taylor v. Robinson*, 59 Idaho 485, 83 P.2d 983 (1938).

The fact that the state board of examiners has not the skill and the necessary help to properly pass on claims against the unemployment compensation fund would not justify the dispensing with the necessity thereof, since a change, if any, must be made by the people and not the courts. *State ex rel. Taylor v. Robinson*, 59 Idaho 485, 83 P.2d 983 (1938).

Waiver of Presentment.

Stipulation of parties litigant can not waive the requirement of compliance with this section as to presenting to, and passage upon, claims by the board of examiners. *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 423, 451; Vol. II, pp. 1415, 1427.

§ 19. Salaries and fees of officers. [Repealed.]

Compiler's notes. As originally adopted, this section provided as follows:

"§ 19. The governor, secretary of state, state auditor, state treasurer, attorney general and superintendent of public instruction, shall, quarterly as due, during their continuance in office, receive for their services compensation, which, for the term next ensuing after the adoption of this Constitution, is fixed as follows: governor, three thousand dollars per annum; secretary of state, one thousand

eight hundred dollars per annum; state auditor, one thousand eight hundred dollars per annum; state treasurer, one thousand dollars per annum; attorney general, two thousand dollars per annum; and superintendent of public instruction, one thousand five hundred dollars per annum. The lieutenant-governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the sessions of the legislature. The compensa-

tions enumerated shall be in full for all services by said officers respectively, rendered in any official capacity or employment whatever during their respective terms of office. No officer named in this section shall receive, for the performance of any official duty, any fee for his own use; but all fees fixed by law for the performance by either of them, of any official duty, shall be collected in advance, and deposited with the state treasurer quarterly to the credit of the state. The legislature may by law, diminish or increase the compensation of any or all of the officers named in this section, but no such diminution or increase, shall affect the salaries of the officers then in office during their term; Provided, however, the legislature may provide for the payment of actual and necessary expenses to the governor, lieutenant-governor, secretary of state, attorney general, and superintendent of public instruction, while traveling within the state in the performance of official duty."

It was amended, as proposed by S.L. 1927, p. 586, H.J.R. No. 3, and ratified at the general election in November, 1928, to read as follows:

"§ 19. Salaries and fees of officers. — The governor, secretary of state, state auditor, state treasurer, attorney general, and superintendent of public instruction shall, monthly as due, during their continuance in office, receive for their services compensation, which, for the term next ensuing after the adoption of this constitution, is fixed as follows: Governor, three thousand dollars (\$3,000) per annum; secretary of state, one thousand eight hundred dollars (\$1,800) per annum; state auditor, one thousand eight hundred dollars (\$1,800) per annum; state treasurer, one thousand dollars (\$1,000) per annum; attorney general, two thousand dollars (\$2,000) per annum; and superintendent of public instruction, one thousand five hundred dollars (\$1,500) per annum. The lieutenant governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the sessions of the legislature. The compensations enumerated shall be in full for all services by said officers respectively, rendered in any official capacity or employment whatever during their respective terms of office.

No officer named in this section shall receive, for the performance of any official duty, any fee for his own use; but all fees fixed by law for the performance by either of them, of any official duty, shall be collected in advance and deposited with the state treasurer quarterly to the credit of the state. The legislature may, by law, diminish or increase the compensation of any or all of the officers named in this section, but no such diminution or increase shall affect the salaries of the officers

then in office during their term; provided, however, the legislature may provide for the payment of actual and necessary expenses to the governor, lieutenant governor, secretary of state, attorney general, and superintendent of public instruction, while traveling within the state in the performance of official duty."

This section was amended as proposed by S.L. 1994, p. 1493, S.J.R. No. 109, § 5 and ratified at the general election November 8, 1994, to read as follows:

"Salaries and fees of officers. The governor, secretary of state, state controller, state treasurer, attorney general, and superintendent of public instruction shall, monthly as due, during their continuance in office, receive for their services compensation, which, for the term next ensuing after the adoption of this constitution, is fixed as follows: Governor, three thousand dollars per annum; secretary of state, one thousand eight hundred dollars per annum; state controller, one thousand eight hundred dollars per annum; state treasurer, one thousand dollars per annum; attorney general, two thousand dollars per annum; and superintendent of public instruction, one thousand five hundred dollars per annum. The lieutenant governor shall receive the same per diem as may be provided by law for the speaker of the house of representatives, to be allowed only during the sessions of the legislature. The compensations enumerated shall be in full for all services by said officers respectively, rendered in any official capacity or employment whatever during their respective terms of office.

No officer named in this section shall receive, for the performance of any official duty, any fee for his own use; but all fees fixed by law for the performance by either of them, of any official duty, shall be collected in advance and deposited with the state treasurer quarterly to the credit of the state. The legislature may, by law, diminish or increase the compensation of any or all of the officers named in this section, but no such diminution or increase shall affect the salaries of the officers then in office during their term; provided, however, the legislature may provide for the payment of actual and necessary expenses to these officers while traveling in the performance of official duty."

The repeal of this section was proposed by S.L. 1997, p. 1301, S.J.R. No. 102, and such repeal was ratified at the general election on November 3, 1998.

Cross ref. Salaries of heads of departments, § 67-2405.

Salaries of state officers and justices of Supreme Court, §§ 59-501, 59-502.

Comp. provisions: Cal. Art. 5, § 12.

Sec. to sec. ref. This section is referred to in § 67-809.

Cited in: Stein v. Morrison, 9 Idaho 426, 75

P. 246 (1904); *Woods v. Bragaw*, 13 Idaho 607, 92 P. 576 (1907).

ANALYSIS

"Enumerated" construed.
 Estoppel to question constitutionality.
 Fees of secretary of state.
 Judicial officers.
 Mandamus.
 Salaries fixed by law.

"Enumerated" Construed.

In the constitutional provision fixing the salary of the governor and other state officers and providing that the compensation "enumerated" shall be in full for all services by said officers respectively, the word, "enumerated" does not apply exclusively to the compensations which are expressed in a specified number of dollars per annum, but applies to the per diem compensation of the lieutenant governor as president of the senate, the amount of which is fixed by reference to per diem compensation of the speaker of the house of representatives, since "enumerated" as used in this section expresses the same meaning as would have been conveyed had the words "designated" or "specifically mentioned" been used in its stead. *State ex rel. Wright v. Gossett*, 62 Idaho 521, 113 P.2d 415 (1941).

Estoppel to Question Constitutionality.

The state is not estopped from questioning the constitutionality of a statute where it has not been benefited in any way thereby. *State ex rel. Wright v. Gossett*, 62 Idaho 521, 113 P.2d 415 (1941).

Fees of Secretary of State.

It is part of the official duty of the secretary of state to prepare session laws and legislative journals for printer, and any fees which

he receives for such services must be paid over into the state treasury. *State ex rel. Anderson v. Lewis*, 6 Idaho 51, 52 P. 163 (1898).

Judicial Officers.

Supreme Court justices were not disqualified to determine whether they were entitled to increased salaries before expiration of existing terms of office. *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411 (1946).

It was not intended, by either the constitution or the legislature, that there should be a restraint against the payment of increase of salaries of judicial officers immediately upon the effective date of the statute providing for same. *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411 (1946).

Mandamus.

Mandamus was the proper remedy where state officers refused to issue warrants for increase in salaries due judicial officers. *Higer v. Hansen*, 67 Idaho 45, 170 P.2d 411 (1946).

Salaries Fixed by Law.

A statute providing for compensation to the lieutenant-governor as president of the senate and speaker of the house to remain after the legislature adjourned and finished the business thereof is unconstitutional, since it was their duty to discharge all of their official duties for the compensation theretofore provided by law. *State ex rel. Wright v. Gossett*, 62 Idaho 521, 113 P.2d 415 (1941).

Opinions of Attorney General. Elected officials of the executive branch of state government may not receive cash compensation for unused vacation leave at the end of their term of office. OAG 86-15.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 423, 451; Vol. II, pp. 1305, 1333, 1365, 1415.

§ 20. Departments limited. — All executive and administrative officers, agencies, and instrumentalities of the executive department of the state and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction, shall be allocated by law among and within not more than twenty departments by no later than January 1, 1975. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections or units in such a manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary agencies may be established by law and need not be allocated within a department; however, such temporary agencies may not exist for longer than two years.

Compiler's notes. This section was added by S.L. 1972, p. 1245, S.J.R. No. 132 and

ratified at the general election in November, 1972 and reads as follows:

“§ 20. **Departments limited.** — All executive and administrative officers, agencies, and instrumentalities of the executive department of the state and their respective functions, powers, and duties, except for the office of governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general and superintendent of public instruction, shall be allocated by law among and within not more than twenty (20) departments by no later than January 1, 1975. Subsequently, all new powers or functions shall be assigned to departments, divisions, sections or units in such a manner as will tend to provide an orderly arrangement in the administrative organization of state government. Temporary agencies may be established by law and need not be allocated within a department; however, such temporary agencies may not exist for longer than two (2) years.”

This section was amended by S.L. 1994, p. 1493, S.J.R. No. 109, § 6 and ratified at the general election November 8, 1994, to read as it now appears.

Cross ref. Departments of government, Art. 2, § 1.

Executive officers listed, Art. 4, § 1.

Governor to appoint officers, Art. 4, § 6.

Sec. to sec. ref. This section is referred to in §§ 20-201, 22-101, 36-101, 39-401, 40-501, 41-201, 44-101, 56-1201, 63-501, 67-2001, 67-2402, 67-2601 and 67-5701.

Opinions of Attorney General. The Director of Law Enforcement is the appointing authority for the staff of the POST Academy, since the POST Council is created within the department and has no specific authority to hire and fire employees. Therefore, the director is the appointing authority by operation of § 67-2405. OAG 90-5.

Article V

JUDICIAL DEPARTMENT

SECTION.

1. Forms of action abolished.
2. Judicial power — Where vested.
3. Impeachments — Where and how tried.
4. Impeachments — Where and how tried — Conviction — Impeachment of governor.
5. Treason defined and limited.
6. Supreme Court — Number of justices — Term of office — Calling of district judge to sit with court.
7. Justices prohibited from holding other offices.
8. Terms of Supreme Court.
9. Original and appellate jurisdiction of Supreme Court.
10. Jurisdiction over claims against the state.
11. District courts — Judges and terms.
12. Residence of judges — Holding court out of district — Service by retired justices and judges.

SECTION.

13. Power of legislature respecting courts.
14. Special courts in cities and towns.
15. Clerk of Supreme Court.
16. Clerks of district courts — Election — Term of office.
17. Salaries of justices and judges.
18. Prosecuting attorneys — Term of office — Qualifications.
19. Vacancies — How filled.
20. Jurisdiction of district court.
21. [Repealed.]
22. [Repealed.]
23. Qualifications of district judges.
24. Judicial districts enumerated.
25. Defects in laws to be reported by judges.
26. Court procedure to be general and uniform.
27. Change in compensation of officers.
28. Removal of judicial officers.

§ 1. **Forms of action abolished.** — The distinctions between actions at law and suits in equity, and the forms of all such actions and suits, are hereby prohibited; and there shall be in this state but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action; and every action prosecuted by the people of the state as a party, against a person charged with a public offense, for the punishment of the same, shall be termed a criminal action.

Feigned issues are prohibited, and the fact at issue shall be tried by order of court before a jury.

Cited in: *Stockton v. Oregon Short Line R.R.*, 170 F. 627 (C.C.D. Idaho 1909); *Christensen v. Hollingsworth*, 6 Idaho 87, 53 P. 211, 96 Am. St. R. 256 (1898); *Anderson v. War Eagle Consol. Mining Co.*, 8 Idaho 789, 72 P. 671 (1903); *Coleman v. Jagers*, 12 Idaho 125, 85 P. 894, 118 Am. St. R. 207 (1906); *In re Sharp*, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908); *Bates v. Capital State Bank*, 21 Idaho 141, 121 P. 561 (1912); *Poncía v. Eagle*, 28 Idaho 60, 152 P. 208 (1915); *Beem v. Davis*, 31 Idaho 730, 175 P. 959 (1918); *Brady v. Place*, 41 Idaho 747, 242 P. 314 (1925); *Brady v. Place*, 41 Idaho 753, 243 P. 654 (1926); *Coppedge v. Leiser*, 71 Idaho 248, 229 P.2d 977 (1951); *Woodland v. Spillman*, 75 Idaho 286, 271 P.2d 819 (1954); *Harvey v. Brown*, 80 Idaho 379, 330 P.2d 982 (1958); *R.E.W. Constr. Co. v. District Court*, 88 Idaho 426, 400 P.2d 390 (1965); *Gem-Valley Ranches, Inc. v. Small*, 90 Idaho 354, 411 P.2d 943 (1966); *Lodge v. Miller*, 91 Idaho 662, 429 P.2d 394 (1967); *Jonasson v. Gibson*, 108 Idaho 459, 700 P.2d 81 (Ct. App. 1985); *Paradis v. State*, 110 Idaho 534, 716 P.2d 1306 (1986).

ANALYSIS

Construction in general.
Contempt in civil action.
Declaratory judgment.
Effect on substantive law.
Granting of relief.
Jurisdiction.
Plaintiff in criminal prosecutions.
Post-conviction relief.
Sufficiency of complaint.
Traffic infractions.
Trial by jury not extended.
Venue in divorce suits.

Construction in General.

This section largely abrogates the distinction between cases at law and suits in equity, and now equitable remedies defined by the statute, such as injunctions, are largely matters of right. *Staples v. Rossi*, 7 Idaho 618, 65 P. 67 (1901).

Relief at law and equity may be granted in the same action, and may be granted if facts pleaded and proved entitle plaintiff to any relief, either legal, equitable, or both. *Murphy v. Russell*, 8 Idaho 133, 67 P. 421 (1901).

No importance attaches to manner or form of pleading a cause of action so long as facts pleaded entitle pleader to relief of any kind. *City of Pocatello v. Murray*, 21 Idaho 180, 120 P. 812, aff'd, 226 U.S. 318, 33 S. Ct. 107, 57 L. Ed. 239 (1912).

Both legal and equitable causes of action may be joined in the same complaint. These causes of action need not be separately set forth, provided that a concise and complete statement of them is made, and when that is done plaintiff is entitled to any relief at law or

in equity that his proof under such allegations may show him to be entitled to. *Carroll v. Hartford Fire Ins. Co.*, 28 Idaho 466, 154 P. 985 (1916).

Under the law of this state the distinctions between actions at law and suits in equity, and the forms of such actions and suits, are prohibited to the end that there shall be but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action. *Anderson v. Cummings*, 81 Idaho 327, 340 P.2d 1111 (1959); *Miller v. Remior*, 86 Idaho 121, 383 P.2d 596 (1963).

The distinctions between actions at law and suits in equity, and the forms of all such actions and suits, have been abrogated in Idaho. *Cole v. Kunzler*, 115 Idaho 552, 768 P.2d 815 (Ct. App. 1989).

Contempt in Civil Action.

Where plaintiffs were awarded damages for crop damage due to defendants depriving them of their decreed irrigation waters both prior to and after the issuance of a court order restraining defendants, such award did not grow out of or depend upon defendants' violation of the restraining order, and the court did not exceed its jurisdiction in fining defendants for contempt of the restraining order, since the amount assessed was assessed as a fine and not as plaintiffs' damages, and no part of the fine was adjudged to be paid to the plaintiffs or either of them. *Nordick v. Sorensen*, 81 Idaho 117, 338 P.2d 766 (1959).

The contempt involved herein grew out of a civil action, the defendants having wilfully violated the trial court's order restraining them from interfering with plaintiffs' use of decreed water, and hence partakes of its nature. *Nordick v. Sorensen*, 81 Idaho 117, 338 P.2d 766 (1959).

Declaratory Judgment.

Relief by way of a declaratory judgment is not available in a case where negligence of the defendant is the determinative issue due to the right of the parties to a jury trial in a negligence case. *Temperance Ins. Exch. v. Carver*, 83 Idaho 487, 365 P.2d 824 (1961).

Effect on Substantive Law.

But this section does not abolish the rules of law and equity. *Dewey v. Schreiber Implement Co.*, 12 Idaho 280, 85 P. 921 (1906).

Granting of Relief.

Relief will be granted in any case where the pleadings and proof entitle the plaintiff to any relief, whether legal or equitable. *Addy v. Stewart*, 69 Idaho 357, 207 P.2d 498 (1949).

Jurisdiction.

A judge does not lose jurisdiction over a case by deciding it on legal grounds other than those argued by the parties; he or she

may commit error by deciding the case in this fashion, but decisional error is not to be equated with a lack of jurisdiction. *State v. Thompson*, 113 Idaho 466, 745 P.2d 1087 (Ct. App. 1987), modified on other grounds, 114 Idaho 746, 760 P.2d 1162 (1988).

Plaintiff in Criminal Prosecutions.

This section which authorizes prosecutions in name of the people is not violated by § 19-104, which directs that criminal actions shall be prosecuted in name of the "state of Idaho" as party plaintiff, and prosecution by "state of Idaho" as plaintiff is in conformity with the constitution and the statute. *State v. Lockhart*, 18 Idaho 730, 111 P. 853 (1910).

A criminal action for a state offense committed within the limits of a city cannot be prosecuted in the name of such city. *City of Sandpoint v. Butigan*, 91 Idaho 855, 433 P.2d 125 (1967).

Post-Conviction Relief.

An application for post-conviction relief is a special proceeding, civil in nature. *Clark v. State*, 92 Idaho 827, 452 P.2d 54 (1969).

An action under the Uniform Post Conviction Procedure Act is civil in nature. Thus, the Idaho Rules of Civil Procedure are applicable in such a proceeding. *State v. Goodrich*, 104 Idaho 469, 660 P.2d 934 (1983).

An application for post-conviction relief is a special proceeding, civil in nature and is an entirely new proceeding, distinct from the criminal action which led to conviction. *State v. Bearshield*, 104 Idaho 676, 662 P.2d 548 (1983), modified on other grounds, *State v. Blume*, 113 Idaho 224, 743 P.2d 92 (Ct. App. 1987).

Sufficiency of Complaint.

A complaint is not subject to a general demurrer if it states any cause of action entitling the plaintiff to relief, either in law or

in equity. *Hixon v. Allphin*, 76 Idaho 327, 281 P.2d 1042 (1955).

Traffic Infractions.

Although the Idaho Traffic Infractions Act defines infractions as "civil public offenses," for purposes of constitutional analysis, they must be considered criminal. *State v. Bennion*, 112 Idaho 32, 730 P.2d 952 (1986).

Trial by Jury Not Extended.

This section is not intended to extend right of trial by jury, but simply to secure that right as it existed at date of adoption of constitution. *Johnson v. Nichols*, 48 Idaho 654, 284 P. 840 (1930), overruled on other grounds, *David Steed & Assocs. v. Young*, 115 Idaho 247, 766 P.2d 717 (1988).

All issues of fact in equity suits are triable by court and such procedure is not unconstitutional. *Tomita v. Johnson*, 49 Idaho 643, 290 P. 395 (1930).

This section does not extend the right of trial by jury to actions solely involving equity issues such as the accounting and winding up of a partnership — a matter traditionally the province of the courts of equity. *Thomas v. Schmelzer*, 118 Idaho 353, 796 P.2d 1026 (Ct. App. 1990).

Venue in Divorce Suits.

A holding that the venue in a divorce action is in the county of the residence of the defendant tends to maintain uniformity of practice in keeping with this section. *Finnell v. Finnell*, 59 Idaho 148, 81 P.2d 401 (1938).

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 369; Vol. II, pp. 1493, 1496, 1644, 1775.

Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1496.

§ 2. Judicial power — Where vested. — The judicial power of the state shall be vested in a court for the trial of impeachments, a Supreme Court, district courts, and such other courts inferior to the Supreme Court as established by the legislature. The courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court. The jurisdiction of such inferior courts shall be as prescribed by the legislature. Until provided by law, no changes shall be made in the jurisdiction or in the manner of the selection of judges of existing inferior courts.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 2. The judicial power of the state shall be vested in a court for the trial of impeachments, a Supreme Court, district courts, probate courts, courts of justices of the peace, and such other courts inferior to the Supreme

Court as may be established by law for any incorporated city or town."

It was amended, as proposed by S.L. 1961, p. 1077, H.J.R. No. 10, and ratified at the general election November 6, 1962, to read as it now appears. An amendment to this section, proposed by S.L. 1907, p. 592, H.J.R. 3,

and voted upon Nov. 3, 1908, S.L. 1913, p. 668, by which probate courts were to be abolished, was declared not to be part of the Constitution on account of noncompliance with the requirements for amending. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908).

Cross ref. Courts of record, § 1-102.

Comp. provisions: Cal. Art. 6, § 1.

Mont. Art. 7, § 1.

Ore. Art. 7, § 1.

Utah. Art. 8, § 1.

Wash. Art. 4, § 1.

Wyo. Art. 5, § 1.

Sec. to sec. ref. This section is referred to in § 1-2403.

Cited in: *Ada County v. Ryals*, 4 Idaho 365, 39 P. 556 (1895); *Dewey v. Schreiber Implement Co.*, 12 Idaho 280, 85 P. 921 (1906); (in brief of counsel) *In re Sharp*, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908); *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909); (in syllabus possibly by mistake for Art. 5, § 20) *Rowe v. Stevens*, 25 Idaho 237, 137 P. 159 (1913); *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083, 1916E Ann. Cas. 282 (1914); *Budge v. Gifford*, 26 Idaho 521, 144 P. 333 (1914); *Arneson v. Robinson*, 59 Idaho 223, 82 P.2d 249 (1938); *Hancock v. Halliday*, 65 Idaho 645, 150 P.2d 137, 154 A.L.R. 295 (1943); *In re Idaho State Fed'n of Labor*, 75 Idaho 367, 272 P.2d 707 (1954); *Foster v. Walus*, 81 Idaho 452, 347 P.2d 120 (1959); *Spaulding v. Children's Home Finding & Aid Soc'y*, 89 Idaho 10, 402 P.2d 52 (1965); *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967); *Barnett v. Reed*, 93 Idaho 319, 460 P.2d 744 (1969); *Collins v. Crowley*, 94 Idaho 891, 499 P.2d 1247 (1972); *Gibbs v. Shaud*, 98 Idaho 37, 557 P.2d 631 (1976); *Swisher v. State Dep't of Envtl. & Community Servs.*, 98 Idaho 565, 569 P.2d 910 (1977); *Idaho State Bar Ass'n v. Idaho Pub. Utils. Comm'n*, 102 Idaho 672, 637 P.2d 1168 (1981); *McGill v. Lester*, 105 Idaho 692, 672 P.2d 570 (Ct. App. 1983); *Carr v. Magistrate Court*, 108 Idaho 546, 700 P.2d 949 (1985); *Talbot v. Ames Constr.*, 127 Idaho 648, 904 P.2d 560 (1995); *State ex rel. Higginson v. United States*, 128 Idaho 246, 912 P.2d 614 (1995); *State v. Wilder*, 138 Idaho 644, 67 P.3d 839 (Ct. App. 2003).

ANALYSIS

Approval of administrative rules.

Attorney magistrate.

Board of commissioners of bar association.

Board of medical examiners.

Clerk of district court.

Contempt power.

Court jurisdiction.

Department of finance.

District courts.

Judicial powers generally.

—Administrative agencies.

Justice courts.

Litigation against judges.

Ministerial acts distinguished.

Nonpartisan elections.

Probate courts.

Public utilities commission.

Rejection of administrative rule by legislature.

State engineer.

Supreme court.

—Certification from federal courts.

Workman's compensation.

Approval of Administrative Rules.

Any legislative approval of a rule, which is granted pursuant to §§ 67-5217 and 67-5218, has merely a nonbinding advisory effect upon the Supreme Court in its resolution of legal issues; to permit the legislature to decide what administrative rules do or do not conflict with statutory law would constitute an abrogation of the judicial power in violation of art. 2, § 1, this section and art. 5, § 13 of the Idaho Constitution. *Holly Care Center v. State, Dep't of Emp.*, 110 Idaho 76, 714 P.2d 45 (1986).

Attorney Magistrate.

An attorney magistrate is a judicial officer of the district court whose jurisdiction is established by legislation, under the Idaho Constitution, by rule of the Idaho Supreme Court, and by the rules of the respective district courts. *Marks v. Vehlow*, 105 Idaho 560, 671 P.2d 473 (1983).

The attorney magistrate in conducting habeas corpus proceedings exercised the judicial power of the State of Idaho and, in order to vindicate his jurisdiction and proper function, the magistrate is vested with the judicial contempt power; while this power has been recognized by statute (Title 7, chapter 6), its source lies in the Constitution and the common law. *Marks v. Vehlow*, 105 Idaho 560, 671 P.2d 473 (1983).

Board of Commissioners of Bar Association.

Statute creating board of commissioners of the state bar association and providing for investigation and hearing of charges against members of bar subject to review by Supreme Court is not unconstitutional as creating a court other than those provided for in this section. *In re Edwards*, 45 Idaho 676, 266 P. 665 (1928).

Board of Medical Examiners.

Laws 1899, p. 345, § 6, which vests in board of medical examiners, created by the act of which such section is a part, power to determine what is a reputable school of medicine such as to entitle graduates thereof to take the examination for physician's license, does not vest in the board such judicial power

as to render the act repugnant to this section of the Constitution. In *re Inman*, 8 Idaho 398, 69 P. 120 (1902); *Barton v. Schmershall*, 21 Idaho 562, 122 P. 385 (1912).

Clerk of District Court.

Since the office of the clerk of the district court is created in Const. Art. 5, the office is within the domain of and subject to the power of the judicial branch; accordingly, the Legislature does not have the authority to deprive the judicial branch of its power and control over the office. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987), *aff'd*, 913 F.2d 699 (9th Cir. 1990).

Contempt Power.

While Title 7, chapter 6, provides statutory guidance with respect to contempts, it may not constitutionally circumscribe the judicial power conferred by this section, the power recognized by § 1-1603, or the inherent common-law contempt power. *Marks v. Vehlow*, 105 Idaho 560, 671 P.2d 473 (1983).

Court Jurisdiction.

The magistrate court erred in summarily terminating a driver's license suspension proceeding and returning the license to a driver on the ground that the court did not have jurisdiction to proceed on the basis of fact that the affidavit filed by the officer was invalid; with both jurisdiction over the subject matter and personal jurisdiction over the parties, the magistrate court erred when it concluded that "the court does not have jurisdiction to proceed." *Hanson v. State*, 121 Idaho 507, 826 P.2d 468 (1992).

Department of Finance.

Neither the department of finance nor its commissioner belongs to the judicial branch of the government and the legislature is prohibited from conferring judicial powers on them. The powers sought to be conferred on them by the sales tax act belong to the judicial department. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

District Courts.

Provision of city charter giving municipal court exclusive jurisdiction of cases involving violation of city ordinances did not prevent district court from having jurisdiction of suit to enjoin defendant from violating city ordinance, since legislature could not limit jurisdiction of district court granted by Const., Art. 5, § 20. *Boise City v. Better Homes, Inc.*, 72 Idaho 441, 243 P.2d 303 (1952).

Judicial Powers Generally.

Coroner is not vested with judicial authority and does not act as a court in holding an inquest but in the performance of such duty acts ministerially only. In *re Sly*, 9 Idaho 779, 76 P. 766 (1904).

Removal of village marshal by board of trustees is not such an exercise of judicial power as to be repugnant to provisions of the Constitution. *Conwell v. Culesac*, 13 Idaho 575, 92 P. 535 (1907).

The judicial department is created by this section and confers on the courts the duty to construe the laws. The legislature may not dictate the interpretation or construction of statutes. Concurring opinion of Justice Morgan. *State ex rel. McKelvey v. Barnes*, 55 Idaho 578, 45 P.2d 293 (1935).

Courts do not exercise legislative functions in interpreting, construing or giving meaning to a legislative act. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

Judicial power cannot be conferred upon any agency of the executive department, in the absence of constitutional authority, where the constitution has specifically provided for the creation of a judicial system. *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957).

It is conceded that the creation, destruction, expansion or contraction of school districts is a legislative and not a judicial function. The legislature has plenary powers in such matters. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

This section provides that the legislature is to be the sole authority in determining the jurisdiction of the inferior courts. *Acker v. Mader*, 94 Idaho 94, 481 P.2d 605 (1971).

—Administrative Agencies.

Because in liquor license revocations, the Department of Law Enforcement relies on a standard of proof akin to the preponderance of evidence standard generally applied in administrative hearings and provides for judicial review, establishment could not claim that revocation of its license pursuant to § 23-1010A deprived it of its constitutional due process rights or conferred judicial power to the legislatively created agency in contravention of this section. *Northern Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 926 P.2d 213 (Ct. App. 1996).

Justice Courts.

In an action to recover rents due during a period of redemption, no constitutional prohibition existed against the justice court hearing a suit involving property boundaries or title to the extent that the amount in controversy did not exceed \$300.00. *Acker v. Mader*, 94 Idaho 94, 481 P.2d 605 (1971).

Litigation Against Judges.

Where individuals sued all members of the Supreme Court, as well as virtually all members of the bench in northern Idaho, manifested a pattern of initiating litigation against any judge ruling against him and stated and restated his belief that no judge in Idaho could hear his cases, at least until the bar is

declared unlawful, the Supreme Court would not declare itself disqualified and would enjoin individual from filing pro se actions without court approval and from filing liens without an attorney. *Eismann v. Miller*, 101 Idaho 692, 619 P.2d 1145 (1980). See also, *Miller v. Johnson*, 541 F. Supp. 1165 (D.D.C. 1982).

Ministerial Acts Distinguished.

Where ministerial officer is called upon to decide and determine matters arising in administration of his office, when such acts are not made final or binding upon courts of the state, and full opportunity is given to any person aggrieved to have such matters adjudicated in the proper tribunals of the state, acts of such officer are ministerial and not judicial. *Speer v. Stephenson*, 16 Idaho 707, 102 P. 365 (1909).

Nonpartisan Elections.

Legislature may provide for nomination of candidates for judges of supreme and district courts on nonpartisan tickets without also providing for nonpartisan candidates for all of the judiciary. *Koelsch v. Girard*, 54 Idaho 452, 33 P.2d 816 (1934).

Probate Courts.

This section vested the judicial power of the state in the courts named in it, including the probate courts, and the only limitation of the jurisdiction of probate courts is found in art. 5, §§ 2, 21 (repealed) of the Constitution and there is nothing therein excluding actions of claim and delivery except where the amount involved exceeds \$500. *Preston A. Blair Co. v. Rose*, 56 Idaho 114, 51 P.2d 209 (1935).

Public Utilities Commission.

Public utilities commission is not invested with judicial powers by the act creating it, and can not be under the Constitution. *Neil v. Public Utils. Comm'n*, 32 Idaho 44, 178 P. 271 (1919).

Courts are generally a proper forum in which to challenge legislative enactments. The legislature has not attempted to remove from the jurisdiction of trial courts challenges to Idaho Public Utilities Commission related legislation. *Miles v. Idaho Power Co.*, 116 Idaho 635, 778 P.2d 757 (1989).

Rejection of Administrative Rule by Legislature.

Section 67-5218 makes clear that the legislature has reserved unto itself the power to reject an administrative rule or regulation as part of the statutory process and this reservation is not an intrusion on the judiciary's constitutional powers. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

State Engineer.

Session Laws 1903, p. 223, §§ 4, 5, providing for appropriation, diversion, and adjudication

of the rights to use of the waters of the state, and which contains certain peculiar provisions as to duties of state engineer, apportionment of costs, preparation and use of maps as evidence, etc., in proceedings for adjudication of water rights, is not repugnant to this section. *Boise City Irrigation & Land Co. v. Stewart*, 10 Idaho 38, 77 P. 25 (1904).

Sections of the act which authorize state engineer to pass upon certain questions relating to appropriation of water but which give an appeal to court from decisions of engineer are constitutional. *Boise City Irrigation & Land Co. v. Stewart*, 10 Idaho 38, 77 P. 25 (1904).

The reclamation statute does not vest judicial power in the state engineer; his powers under the act are purely administrative in character. *Twin Falls Canal Co. v. Huff*, 58 Idaho 587, 76 P.2d 923 (1938).

Supreme Court.

The Supreme Court has the inherent authority to make rules governing procedure in the lower courts and may by rule make inapplicable procedural statutes which conflict with the present court systems. *State v. Griffith*, 97 Idaho 52, 539 P.2d 604 (1975).

The Idaho Supreme Court has inherent power to render decisions regarding Idaho law. *Sunshine Mining Co. v. Allendale Mut. Ins. Co.*, 105 Idaho 133, 666 P.2d 1144 (1983).

Article 5, section 9 of the Idaho Constitution is considered as limiting and not as granting the Idaho Supreme Court's jurisdiction. *Sunshine Mining Co. v. Allendale Mut. Ins. Co.*, 105 Idaho 133, 666 P.2d 1144 (1983).

—Certification from Federal Courts.

I.A.R. 12.1, permitting certification of questions of law from United States courts to the Idaho Supreme Court, is constitutional and the certification procedure established therein is valid. *Sunshine Mining Co. v. Allendale Mut. Ins. Co.*, 105 Idaho 133, 666 P.2d 1144 (1983).

Workman's Compensation.

Workman's Compensation Act, § 72-101 et seq., which purports to abolish jurisdiction of courts for actions for injuries arising under its provisions is not in contravention of this section. *Brady v. Place*, 41 Idaho 747, 242 P. 314 (1925).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1499.

16 Am. Jur. 2d, Constitutional Law, §§ 306, 307.

16 C.J.S., Constitutional Law, §§ 169-173.

§ 3. Impeachments — Where and how tried. — The court for the trial of impeachments shall be the senate. A majority of the members elected shall be necessary to a quorum, and the judgment shall not extend beyond removal from, and disqualification to hold office in this state; but the party shall be liable to indictment and punishment according to law.

Comp. provisions: Mont. Art. 5, § 13.

Utah. Art. 6, §§ 17, 18.

Wash. Art. 5, § 1.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1499.

63A Am. Jur. 2d, Public Officers and Employees, §§ 212-218.

67 C.J.S., Officers and Public Employees, §§ 179-181.

§ 4. Impeachments — Where and how tried — Conviction — Impeachment of governor. — The house of representatives solely shall have the power of impeachment. No person shall be convicted without the concurrence of two-thirds ($\frac{2}{3}$) of the senators elected. When the governor is impeached, the chief justice shall preside.

Cited in: State ex rel. Higginson v. United States, 128 Idaho 246, 912 P.2d 614 (1995).

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1499.

§ 5. Treason defined and limited. — Treason against the state shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture of estate.

Cross ref. Proof of treason, § 9-501.

Comp. provisions: Mont. Art. 2, § 30.

Utah. Art. 1, § 19.

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1500.

87 C.J.S., Treason, § 8.

§ 6. Supreme Court — Number of justices — Term of office — Calling of district judge to sit with court. — The Supreme Court shall consist of five justices, a majority of whom shall be necessary to make a quorum or pronounce a decision. If a justice of the Supreme Court shall be disqualified from sitting in a cause before said court, or be unable to sit therein, by reason of illness or absence, the said court may call a district judge to sit in said court on the hearing of such cause.

The justices of the Supreme Court shall be elected by the electors of the state at large. The terms of office of the justices of the Supreme Court, except as in this article otherwise provided, shall be six years.

The justices of the Supreme Court shall, immediately after the first election under this constitution, be selected by lot, so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years. The lots shall be drawn by the justices of the Supreme Court, who shall, for that purpose, assemble at the seat of government, and

they shall cause the result thereof to be certified to by the secretary of state and filed in his office.

The chief justice shall be selected from among the justices of the Supreme Court by a majority vote of the justices. His term of office shall be four years. When a vacancy in the office of chief justice occurs, a chief justice shall be selected for a full four year term. The chief justice shall be the executive head of the judicial system.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 6. The Supreme Court shall consist of three Justices, a majority of whom shall be necessary to make a quorum or pronounce a decision. The Justices of the Supreme Court shall be elected by the electors of the State at large. The terms of office of the Justices of the Supreme Court, except as in this Article otherwise provided, shall be six years. The Justices of the Supreme Court shall, immediately after the first election under this Constitution, be selected by lot, so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years. The lots shall be drawn by the Justices of the Supreme Court, who shall, for that purpose, assemble at the seat of government, and they shall cause the result thereof to be certified to by the Secretary of State, and filed in his office. The Justice having the shortest term to serve, not holding his office by appointment, or election to fill a vacancy, shall be the Chief Justice, and shall preside at all terms of the Supreme Court; and, in case of his absence, the Justice, having in like manner the next shortest term to serve, shall preside in his stead."

It was amended, as proposed by S.L. 1909, p. 441, S.J.R. No. 7, and ratified at the general election in November, 1910, to read as follows:

"§ 6. The Supreme Court shall consist of three Justices, a majority of whom shall be necessary to make a quorum or pronounce a decision. If a Justice of the Supreme Court shall be disqualified from sitting in a cause before said court, or be unable to sit therein, by reason of illness or absence, the said court may call a district judge to sit in said court on the hearing of such cause. The Justices of the Supreme Court shall be elected by the electors of the State at large. The terms of office of the Justices of the Supreme Court, except as in this article otherwise provided, shall be six years. The Justices of the Supreme Court shall, immediately after the first election under this Constitution, be selected by lot, so that one shall hold his office for the term of two years, one for the term of four years, and one for the term of six years. The lots shall be drawn by the Justices of the Supreme Court, who shall, for that purpose assemble at the seat of government, and they shall cause the

result thereof to be certified to by the Secretary of State and filed in his office. The Justice having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be Chief Justice, and shall preside at all terms of the Supreme Court, and in case of his absence, the Justice having in like manner the next shortest term to serve shall preside in his stead."

It was again amended, as proposed by S.L. 1919, p. 618, H.J.R. No. 6, and ratified at the general election in November, 1920, to read as follows:

"§ 6. Supreme Court — Number of justices — Term of office — Calling of district judge to sit with court. — The Supreme Court shall consist of five (5) justices, a majority of whom shall be necessary to make a quorum or pronounce a decision. If a justice of the Supreme Court shall be disqualified from sitting in a cause before said court, or be unable to sit therein, by reason of illness or absence, the said court may call a district judge to sit in said court on the hearing of such cause.

"The justices of the Supreme Court shall be elected by the electors of the state at large. The terms of office of the justices of the Supreme Court, except as in this article otherwise provided, shall be six (6) years.

"The justice of the Supreme Court shall, immediately after the first election under this constitution, be selected by lot, so that one shall hold his office for the term of two (2) years, one for the term of four (4) years, and one for the term of six (6) years. The lots shall be drawn by the justices of the Supreme Court, who shall, for that purpose, assemble at the seat of government, and they shall cause the result thereof to be certified to by the secretary of state and filed in his office. The justice having the shortest term to serve, not holding his office by appointment or election to fill a vacancy, shall be chief justice, and shall preside at all terms of the Supreme Court, and, in case of his absence, the justice having in like manner the next shortest term to serve shall preside in his stead." except for a temporary provision which read:

"At the general election at which this amendment is submitted, the legislature shall make provision for the election of two additional justices, one for the term of four

years and one for the term of six years, and if this amendment is ratified, the justices so elected shall take office on the first Monday of January, 1921."

It was amended as proposed by S.L. 1981, p. 776, H.J.R. No. 2 and ratified at the general election November 2, 1982 to read as it now appears.

Cross ref. Nonpartisan election of Supreme Court justices and district judges, art. 6, § 7, and §§ 34-701 — 34-708, 34-906.

Nomination and election of justices, §§ 34-701 — 34-708.

Supreme Court, general provisions, §§ 1-201 — 1-214.

Comp. provisions: Cal. Art. 6, § 2.

Mont. Art. 7, § 3.

Ore. Art. 7, §§ 2-5, 7.

Utah. Art. 8, § 2.

Wash. Art. 4, § 2.

Wyo. Art. 5, § 4.

Cited in: *Brown v. Miller*, 22 Idaho 307, 125 P. 981 (1912); *Budge v. Gifford*, 26 Idaho 521, 144 P. 333 (1914); *Winter v. Davis*, 65 Idaho 696, 152 P.2d 249 (1944); *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982); *Stuart v. State*, 128 Idaho 436, 914 P.2d 933 (1996).

ANALYSIS

Decision by divided court.
Powers of district judge.

Decision by Divided Court.

When only two of the justices agree and

§ 7. Justices prohibited from holding other offices. — No justice of the Supreme Court shall be eligible to any other office of trust or profit under the laws of this state during the term for which he was elected.

Comp. provisions: Cal. Art. 6, § 17.

Mont. Art. 7, § 10.

Wash. Art. 4, § 15.

Wyo. Art. 5, § 27.

Cited in: *McDougall v. Sheridan*, 23 Idaho 191, 128 P. 954 (1913); *Jordan v. Pearce*, 91

each of the others disagree as to the amount to be awarded as damages, the legal effect can not be an award of any definite sum without violating both the spirit and the letter of this section. By *Morgan, J.*, dissenting. *Roy v. Oregon S.L.R.R.*, 55 Idaho 404, 42 P.2d 476 (1934), cert. denied, 296 U.S. 579, 56 S. Ct. 89, 80 L. Ed. 409 (1935).

Where one justice favors affirmance of a verdict for \$35,000, another favors its reduction to \$20,000, and two favor its reduction to \$25,000, court's decision to reduce the judgment to \$25,000 or reverse if respondent declines to waive \$10,000 of the award clearly violates this section. By *Morgan, J.*, dissenting. *Roy v. Oregon S.L.R.R.*, 55 Idaho 404, 42 P.2d 476 (1934), cert. denied, 296 U.S. 579, 56 S. Ct. 89, 80 L. Ed. 409 (1935).

Powers of District Judge.

Under this section, when the Supreme Court calls a district judge to sit in the place of a justice incapacitated by illness, the district judge in such case possesses all the power of a justice of the Supreme Court with respect to the cause. *First Nat'l Bank v. Crane Creek Sheep Co.*, 47 Idaho 149, 273 P. 945 (1928).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1500, 1643.

Idaho 687, 429 P.2d 419 (1967).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1522.

§ 8. Terms of Supreme Court. — At least four (4) terms of the Supreme Court shall be held annually; two (2) terms at the seat of state government, and two (2) terms at the city of Lewiston, in Nez Perce county. In case of epidemic, pestilence, or destruction of court houses, the justices may hold the terms of the Supreme Court provided by this section at other convenient places, to be fixed by a majority of said justices. After six (6) years the legislature may alter the provisions of this section.

Comp. provisions: Ore. Art. 7, § 7.

Wyo. Art. 5, § 7.

Priority of Cases.

This section provides only for terms of Supreme Court and where they shall be held. It makes no provision as to causes which shall be considered at various terms. *Talbot v.*

Collins, 33 Idaho 169, 191 P. 354 (1920).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1522.

§ 9. Original and appellate jurisdiction of Supreme Court. — The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the district courts, or the judges thereof, any order of the public utilities commission, any order of the industrial accident board, and any plan proposed by the commission for reapportionment created pursuant to section 2, article III; the legislature may provide conditions of appeal, scope of appeal, and procedure on appeal from orders of the public utilities commission and of the industrial accident board. On appeal from orders of the industrial accident board the court shall be limited to a review of questions of law. The Supreme Court shall also have original jurisdiction to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction.

Compiler's notes. This section was amended by S.L. 1919, p. 619, H.J.R. No. 8 and S.L. 1935, p. 377, H.J.R. No. 1 to read as follows:

“§ 9. **Original and appellate jurisdiction of Supreme Court.** — The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the district courts, or the judges thereof, and any order of the public utilities commission, and any order of the industrial accident board: the legislature may provide conditions of appeal, scope of appeal, and procedure on appeal from orders of the public utilities commission and of the industrial accident board. On appeal from orders of the industrial accident board the court shall be limited to a review of questions of law. The Supreme Court shall also have original jurisdiction to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction.”

This section was amended by S.L. 1993, p. 1530, S.J.R. No 105, § 1 and ratified at the general election November 8, 1994, to read as it now appears.

By § 72-502 references to the “industrial accident board” and “board” are deemed to be references to the “industrial commission.”

Cross ref. For additional cases construing appellate jurisdiction of Supreme Court, see note under § 13-201.

Jurisdiction of Supreme Court, §§ 1-202 — 1-204.

Comp. provisions: Cal. Art. 6, §§ 10, 11.

Mont. Art. 7, § 2.

Ore. Art. 7, § 6.

Utah. Art. 8, § 3.

Wash. Art. 4, § 4.

Wyo. Art. 5, §§ 2,3.

Cited in: *Tootle v. French*, 3 Idaho 1, 25 P. 1091 (1891); *Miller v. Smith*, 7 Idaho 204, 61 P. 824 (1900); *Wilson v. Bartlett*, 7 Idaho 269, 62 P. 415 (1900); *Ponting v. Isaman*, 7 Idaho 283, 62 P. 680 (1900); *First Nat'l Bank v. C. Bunting & Co.*, 7 Idaho 387, 63 P. 694 (1900); *Chemung Mining Co. v. Hanley*, 11 Idaho 302, 81 P. 619 (1905); *Dahlstrom v. Portland Mining Co.*, 12 Idaho 87, 85 P. 916 (1906); *Dewey v. Schreiber Implement Co.*, 12 Idaho 280, 85 P. 921 (1906); *Eureka Mining, Smelting & Power Co. v. Lewiston Nav. Co.*, 12 Idaho 472, 86 P. 49 (1906); *Canadian Bank of Commerce v. Wood*, 13 Idaho 794, 93 P. 257 (1907); *In re Sharp*, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908); *Cain v. C.C. Anderson Co.*, 65 Idaho 443, 145 P.2d 483 (1944); *State v. Behler*, 65 Idaho 464, 146 P.2d 338 (1944); *Clark v. General Mills, Inc.*, 65 Idaho 742, 152 P.2d 895 (1944); *Herman v. Coeur d'Alene Hdwe. & Foundry Co.*, 69 Idaho 423, 208 P.2d 167 (1949); *Brashear v. Brashear*, 71 Idaho 158, 228 P.2d 243 (1951); *Lewis v. Woodall*, 72 Idaho 16, 236 P.2d 91 (1951); *Irvine v. Perry*, 78 Idaho 132, 299 P.2d 97 (1956); *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957); *Branson v. Firemen's Retirement Fund*, 79 Idaho 167, 312 P.2d 1037 (1957); *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957); *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959); *Caesar v. Williams*, 84 Idaho 254, 371 P.2d 241 (1962); *Custom Meat Packing Co. v. Martin*, 85 Idaho 374, 379 P.2d 664 (1963); *Kiger v. Idaho Corp.*, 85 Idaho 424, 380 P.2d 208 (1963); *Idaho Underground Water Users Ass'n v. Idaho Power Co.*, 89 Idaho 147, 404 P.2d 859 (1965); *Ebersole v. State*, 91 Idaho 630, 428 P.2d 947 (1967); *Fountain v.*

T.Y. & Jim Hom, 92 Idaho 928, 453 P.2d 577 (1969); *Manning v. Potlatch Forests, Inc.*, 93 Idaho 855, 477 P.2d 97 (1970); *Mahler v. Birnbaum*, 95 Idaho 14, 501 P.2d 282 (1972); *White v. Marty*, 97 Idaho 85, 540 P.2d 270 (1975); *Lenaghan v. Smith*, 97 Idaho 383, 545 P.2d 471 (1976); *State v. Holtry*, 98 Idaho 140, 559 P.2d 756 (1977); *Bunker Hill Co. v. Washington Water Power Co.*, 98 Idaho 249, 561 P.2d 391 (1977); *State v. Zarate*, 98 Idaho 342, 563 P.2d 400 (1977); *Clark v. Ada County Bd. of Comm'rs*, 98 Idaho 749, 572 P.2d 501 (1977); *State v. White*, 98 Idaho 781, 572 P.2d 884 (1977); *Idah-Best, Inc. v. First Sec. Bank*, 99 Idaho 517, 584 P.2d 1242 (1978); *Jenkins v. Agri-Lines Corp.*, 100 Idaho 549, 602 P.2d 47 (1979); *Guillard v. Department of Emp.*, 100 Idaho 647, 603 P.2d 981 (1979); *Owen v. Newberg Cedar*, 101 Idaho 77, 609 P.2d 144 (1980); *Maez v. Thunderbird Mkt.*, 101 Idaho 128, 609 P.2d 660 (1980); *Roper v. Guerdon Indus., Inc.*, 102 Idaho 19, 624 P.2d 401 (1981); *Curtis v. Shoshone County Sheriff's Office*, 102 Idaho 300, 629 P.2d 696 (1981); *Knapp v. Brotherton's, Inc.*, 102 Idaho 403, 630 P.2d 690 (1981); *Bush v. Bonners Ferry Sch. Dist. No. 101*, 102 Idaho 620, 636 P.2d 175 (1981); *State v. Mason*, 102 Idaho 866, 643 P.2d 78 (1982); *State v. Greene*, 102 Idaho 897, 643 P.2d 1067 (1982); *Gordon v. West*, 103 Idaho 100, 645 P.2d 334 (1982); *State v. Smith*, 103 Idaho 135, 645 P.2d 369 (1982); *Davenport v. State, Dep't of Emp.*, 103 Idaho 492, 650 P.2d 634 (1982); *State ex rel. Moore v. Lawson*, 105 Idaho 164, 667 P.2d 267 (Ct. App. 1983); *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983); *State v. Ruiz*, 106 Idaho 336, 678 P.2d 1109 (1984); *Bullock v. CIT Co. Fed. Credit Union*, 106 Idaho 767, 683 P.2d 415 (1984); *Harrelson v. Pine Crest Psychiatric Ctr.*, 107 Idaho 119, 686 P.2d 64 (1984); *Griggs v. Griggs*, 107 Idaho 123, 686 P.2d 68 (1984); *Davis v. Howard O. Miller Co.*, 107 Idaho 1092, 695 P.2d 1231 (1984); *Horne v. Ponderosa Pine Logging*, 107 Idaho 1111, 695 P.2d 1250 (1985); *Goicoechea v. Blincoc's Magic Valley Packing Co.*, 108 Idaho 403, 700 P.2d 25 (1985); *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 108 Idaho 943, 703 P.2d 707 (1985); *Lindquist v. Gardner*, 770 F.2d 876 (9th Cir. 1985); *Bruce v. Clear Springs Trout Farm*, 109 Idaho 311, 707 P.2d 422 (1985); *Ullrich v. Thorpe Elec.*, 109 Idaho 820, 712 P.2d 521 (1985); *Neufeld v. Browning Ferris Indus.*, 109 Idaho 899, 712 P.2d 600 (1985); *General Tel. Co. v. Idaho Pub. Utils. Comm'n*, 109 Idaho 942, 712 P.2d 643 (1986); *Seese v. Ideal of Idaho, Inc.*, 110 Idaho 32, 714 P.2d 1 (1985); *Barker v. Fischbach & Moore, Inc.*, 110 Idaho 871, 719 P.2d 1131 (1986); *Beaty v. City of Idaho Falls*, 110 Idaho 891, 719 P.2d 1151 (1986); *Hayden Pines Water Co. v. Idaho Pub. Utils. Comm'n*, 111 Idaho 331, 723 P.2d 875 (1986); *Schafer v. Ada County Assessor*, 111

Idaho 870, 728 P.2d 394 (1986); *O'Loughlin v. Circle A Constr.*, 112 Idaho 1048, 739 P.2d 347 (1987); *Paullas v. Andersen Excavating*, 113 Idaho 156, 742 P.2d 411 (1987); *Mapusaga v. Red Lion Riverside Inn*, 113 Idaho 842, 748 P.2d 1372 (1987); *Greenrod v. Parris*, 115 Idaho 109, 765 P.2d 134 (1988); *Johnson v. Bennett Lumber Co.*, 115 Idaho 241, 766 P.2d 711 (1988); *Colpaert v. Larson's, Inc.*, 115 Idaho 825, 771 P.2d 46 (1989); *Parker v. Engle*, 115 Idaho 860, 771 P.2d 524 (1989); *Walters v. Blincoc's Magic Valley Packing Co.*, 117 Idaho 239, 787 P.2d 225 (1989); *Cowles Publishing Co. v. Magistrate Court of First Judicial Dist.*, 118 Idaho 753, 800 P.2d 640 (1990); *State v. Martin*, 119 Idaho 577, 808 P.2d 1322 (1991); *Lang v. Ustick Dental Office*, 120 Idaho 545, 817 P.2d 1069 (1991); *Mortimer v. Riviera Apts.*, 122 Idaho 839, 840 P.2d 383 (1992); *Vendx Mktg. Co. v. Department of Emp.*, 122 Idaho 890, 841 P.2d 420 (1992); *Monroe v. Chuck & Del's, Inc.*, 123 Idaho 627, 851 P.2d 341 (1993); *Evans v. Andrus*, 124 Idaho 6, 855 P.2d 467 (1993); *Garner v. Horkley Oil*, 123 Idaho 831, 853 P.2d 576 (1993); *Reinstein v. McGregor Land & Livestock*, 126 Idaho 156, 879 P.2d 1089 (1994); *Murray-Donahue v. National Car Rental Licensee Ass'n*, 127 Idaho 337, 900 P.2d 1348 (1995); *Welch v. Cowles Publishing Co.*, 127 Idaho 361, 900 P.2d 1372 (1995); *Bullard v. Sun Valley Aviation, Inc.*, 128 Idaho 430, 914 P.2d 564 (1996); *Building Contractors Ass'n v. Idaho Public Utils. Comm'n*, 128 Idaho 534, 916 P.2d 1259 (1996); *Folks v. Moscow Sch. Dist. No. 281*, 129 Idaho 833, 933 P.2d 642 (1997); *Clark v. City of Lewiston*, 133 Idaho 723, 992 P.2d 172 (1999); *Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000); *Industrial Customers of Idaho Power v. Idaho Pub. Utils. Comm'n*, 134 Idaho 285, 1 P.3d 786 (2000); *Van Valkenburgh v. Citizens For Term Limits*, 135 Idaho 121, 15 P.3d 1129 (2000); *Mason v. Donnelly Club*, 135 Idaho 581, 21 P.3d 903 (2001); *Cheung v. Wasatch Elec.*, 136 Idaho 895, 42 P.3d 688 (2002).

ANALYSIS

Alimony.
 All necessary writs.
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In general.
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 — Appeal to district court.
 — Appellate review.
 — Constitutionality of amendment.
 — Decisions prior to amendment.
 — Effect of board's finding.
 — In general.
 — Sufficiency of findings.

Alimony.

Supreme Court has jurisdiction, under this provision, to entertain an original application for temporary alimony, where same is in aid of its appellate jurisdiction. *Galbraith v. Galbraith*, 38 Idaho 15, 219 P. 1059 (1923).

To secure original jurisdiction of Supreme Court in alimony cases it must be made to appear that appeal has been taken and that there is, therefore, occasion for exercise of its appellate jurisdiction. Applicant is required to show not so much that money is necessary for support but rather that it is necessary to complete exercise of appellate jurisdiction. *Vollmer v. Vollmer*, 43 Idaho 395, 253 P. 622 (1927).

All Necessary Writs.*

Court has power to issue all writs necessary to complete exercise of its appellate jurisdiction. It may order transcript of record sent from lower court. *State v. Ricks*, 34 Idaho 122, 201 P. 827 (1921).

Jurisdiction to issue writs necessary or proper to the complete exercise of its appellate jurisdiction is granted to the Supreme Court by this section. *Bedke v. Bedke*, 56 Idaho 235, 53 P.2d 1175 (1936).

Regardless of whether an appeal from an order awarding custody of a child pursuant to a writ of habeas corpus stays the enforcement of the order, under this section the Supreme Court has authority to restrain such enforcement by a writ of prohibition in aid of its appellate jurisdiction. *Brookshier v. Hyatt*, 91 Idaho 305, 420 P.2d 788 (1966).

"Any Decision" Construed.

Every decision of district court may be reviewed upon appeal, but this section was not intended to give a separate appeal for every decision. *Maple v. Williams*, 15 Idaho 642, 98 P. 848 (1908).

Supreme Court has jurisdiction to review upon appeal any decision of district court or

judges thereof, but this provision of the Constitution does not make every order or decision that district court or judge thereof may make directly appealable. When an appeal is taken from an appealable order or judgment to Supreme Court, the latter court has jurisdiction and authority to review any and all orders and decisions made by trial court, to which the party had duly excepted and preserved his exception and objection in the manner and form provided by law; and it is this jurisdiction and authority that legislature has no power to abridge or interfere with. *Utah Ass'n of Credit Men v. Budge*, 16 Idaho 751, 102 P. 390 (1909); *Evans State Bank v. Skeen*, 30 Idaho 703, 167 P. 1165 (1917).

Settled construction of this section is that the phrase "any decision" does not mean all decisions made by courts or judges thereof during progress of trial, but only such as are final, or such as are specifically provided for by statute from which a direct appeal may be taken prior to final judgment. *Weiser Irrigation Dist. v. Middle Valley Irrigation Ditch Co.*, 28 Idaho 548, 155 P. 484 (1916).

Appellate Jurisdiction in General.

Where statutes fail to provide for an appeal from final judgment of district court, Supreme Court will entertain writ of error or other proper writ to bring such judgment before it for review. *State v. Reed*, 3 Idaho 554, 32 P. 202 (1893).

Supreme Court has no original jurisdiction to try any issues involved in an action to quiet title. *Lawrence v. Corbeille*, 32 Idaho 114, 178 P. 834 (1919).

Appellate power of Supreme Court to review any decision of district court necessarily implies error committed in court below and such error must be made to appear. *State v. Ricks*, 34 Idaho 122, 201 P. 827 (1921).

The right of appeal is conferred by legislative authority under this section and § 13 of this article. *Miller v. Gooding Hwy. Dist.*, 54 Idaho 154, 30 P.2d 1074 (1934).

The right of appeal is dependent upon a statutory provision providing therefor. *Miller v. Gooding Hwy. Dist.*, 54 Idaho 154, 30 P.2d 1074 (1934).

The jurisdiction to review conferred by this section does not confer jurisdiction to reduce degree of crime as found by jury (with dissent). *State v. Haggard*, 89 Idaho 217, 404 P.2d 580 (1965).

Although the proper remedy of one adjudged in contempt of court is by extraordinary writ and not by appeal, the Supreme Court, where the appeal was not challenged by the respondent, had jurisdiction to consider and resolve the appeal on its merits. *Jones v. Jones*, 91 Idaho 578, 428 P.2d 497 (1967).

Appeal attempted to be taken to Supreme

Court from order denying defendant's motion for summary judgment is not authorized by the legislature, which, in turn, is constitutionally authorized to prescribe the system of appeals and therefore such order was not appealable. *Wilson v. DeBoard*, 94 Idaho 562, 494 P.2d 566 (1972).

Where the state appealed from a district court's order of acquittal in a disorderly conduct case, Supreme Court refused to consider appeal which was not authorized by statute and would not exercise plenary power to consider such appeal. *State v. Berlin*, 95 Idaho 225, 506 P.2d 122 (1973).

Although plaintiff could not appeal as a matter of right from that part of the court order holding him in contempt for failure to pay alimony and attorney fees, the Supreme Court nevertheless may, in its discretion, consider such an appeal from the district court. *Parker v. Parker*, 97 Idaho 209, 541 P.2d 1177 (1975).

The state supreme court has plenary appellate jurisdiction to review any decision of the district court, even if the appellant has no statutory right to appeal the decision, and the court would exercise such power where a case involved important questions, of a recurring nature, concerning the construction of the state's constitution and its criminal rules and statutes. *Stockwell v. State*, 98 Idaho 797, 573 P.2d 116 (1977).

A lower court's grant of defendant's motion to dismiss is appealable under § 19-2804(1), repealed in 1977, and where the denial of the motion to amend led to the granting of the motion to dismiss, review of the denial of the motion to amend is an exercise of this court's plenary power, under this section. *State v. Gumm*, 99 Idaho 549, 585 P.2d 959 (1978).

Because the question of jurisdiction on appeal from a conviction is fundamental, it must not be ignored when brought to the attention of the Court of Appeals and should be addressed before considering the merits of the substantive appeal. *State v. Rollins*, 103 Idaho 48, 644 P.2d 370 (Ct. App. 1982).

Appointment of Receiver.

Supreme Court has power to appoint receiver to act pending litigation. *Chemung Mining Co. v. Hanley*, 11 Idaho 302, 81 P. 619 (1905).

Attorney's Fees.

Supreme Court may allow attorney's fees or suit money on appeal in divorce case after case has been filed in that court, when the same is necessary to the complete exercise of its appellate jurisdiction. *Roby v. Roby*, 9 Idaho 371, 74 P. 957, 3 Ann. Cas. 50 (1903); *Enders v. Enders*, 34 Idaho 381, 201 P. 714, 18 A.L.R. 1492 (1921).

This section authorizes allowance of suit money and attorney's fees to wife prosecuting

appeal in divorce action, but only pending appeal from judgment of divorce. *Mathers v. Mathers*, 40 Idaho 189, 232 P. 573 (1924).

The Supreme Court may allow attorney's fees or suit money on appeal in divorce cases when necessary to the complete exercise of its appellate jurisdiction, but it must appear that there is occasion for the exercise of its jurisdiction and that the allowance is necessary. Allowance denied to wife shown to have ample separate estate. *McDonald v. McDonald*, 55 Idaho 102, 39 P.2d 293 (1934).

Attorney's fees will not be allowed to a wife to enable her to defend against the invoking of the original jurisdiction of the Supreme Court by the husband. *McDonald v. McDonald*, 55 Idaho 102, 39 P.2d 293 (1934).

The Supreme Court will issue a writ (without designation), under the authority of this section, directed to the husband in a divorce action to compel him to pay costs and attorney's fees, to enable a wife to prosecute or defend an appeal in such an action. *Bedke v. Bedke*, 56 Idaho 235, 53 P.2d 1175 (1936).

A motion by appellant for support money, costs of appeal, and attorney fees filed one day prior to date for oral argument on appeal was not necessary to exercise of court's appellate jurisdiction, especially where affidavit stated that she was able to borrow the money required for the expenses. *Finnegan v. Finnegan*, 76 Idaho 500, 285 P.2d 488 (1955).

Certification from Federal Courts.

I.A.R. 12.1, permitting certification of questions of law from United States courts to the Idaho Supreme Court, is constitutional and the certification procedure established therein is valid. *Sunshine Mining Co. v. Allendale Mut. Ins. Co.*, 105 Idaho 133, 666 P.2d 1144 (1983).

Certiorari.

When the Constitution was adopted, jurisdiction was therein granted to Supreme Court to issue writ of certiorari then known and in use in the territory of Idaho, and none other. *Neil v. Public Utils. Comm'n*, 32 Idaho 44, 178 P. 271 (1919).

Petition to determine validity of title selected by attorney general for initiated measure is in the nature of a proceeding for a writ of certiorari or review. *In re Idaho State Fed'n of Labor*, 75 Idaho 367, 272 P.2d 707 (1954).

Change of Venue.

To grant stay of proceedings pending appeal from order denying change of place of trial would be equivalent to granting writ of prohibition without showing necessity for the exercise of appellate jurisdiction. *Shultz v. Flynn Transp. Co.*, 44 Idaho 155, 255 P. 644 (1927).

Condemnation Suits.

While appeal in condemnation suit does not stay proceedings, Supreme Court may stay

such when ends of justice require it. *Blackwell Lumber Co. v. Empire Mill Co.*, 29 Idaho 236, 158 P. 792, 1916E Ann. Cas. 35 (1916).

Constitutional Violations.

Where petition alleged sufficient facts concerning a possible constitutional violation of an urgent nature, the Supreme Court accepted jurisdiction to review the petition for extraordinary relief. *Sweeney v. Otter*, 119 Idaho 135, 804 P.2d 308 (1990).

Indian tribe's petition for an extraordinary writ, which specifically asked the Supreme Court to find a House Joint Resolution invalid because it violated the Idaho Constitution, alleged sufficient facts concerning possible constitutional violation for Supreme Court to exercise original jurisdiction. *Nez Perce Tribe v. Cenarrusa*, 125 Idaho 37, 867 P.2d 911 (1993).

Contempt.

Although the judgment and orders of the court or judge, made in cases of contempt, are final and conclusive, under the Supreme Court's constitutional prerogative to review, upon appeal, any decision of the district courts, the court has discretion to hear an appeal in a contempt case. *Lester v. Lester*, 99 Idaho 250, 580 P.2d 853 (1978).

While the Supreme Court has plenary power under this section to review a contempt case and contempt orders, a writ of review remains the proper method of securing review of a contempt order in the usual case. *Marks v. Vehlow*, 105 Idaho 560, 671 P.2d 473 (1983).

Criminal Cases.

Right of appeal in a criminal case is absolute and in no wise dependent upon the innocence or guilt of defendant. *In re Neil*, 12 Idaho 749, 87 P. 881 (1906).

Where defendants, convicted of crime in district court, took the usual proceedings to appeal to Supreme Court but were unable to obtain a transcript of testimony on account of court reporter's death before transcript was prepared, neither original nor appellate jurisdiction of Supreme Court, as conferred by this section, enabled it to grant motion of such persons for an order to set aside judgment of conviction and to grant them a new trial, on ground that they could not be heard on appeal from such judgment. *State v. Ricks*, 32 Idaho 232, 180 P. 257 (1919).

Judgment based upon verdict of guilty and determination by jury that defendant suffer death penalty is decision or judgment of district court within meaning of this section. *State v. Ramirez*, 34 Idaho 623, 203 P. 279, 29 A.L.R. 297 (1921).

This section gives the Supreme Court authority to review appeals by the state in

criminal matters. *State v. Lewis*, 96 Idaho 743, 536 P.2d 738 (1975).

The Supreme Court had plenary power to hear an appeal taken by the state from a district court ruling dismissing charges of rape and kidnapping on defendants' motion for dismissal on the ground that elements of the crime had not been proven beyond a reasonable doubt, even though appeal from an order granting such a motion was not included in former section which enumerated orders or rulings from which appeal may be taken by the state. *State v. Lewis*, 96 Idaho 743, 536 P.2d 738 (1975).

Where the state appealed from an order of the district court granting defendant's motion to dismiss an information charging statutory rape, the Supreme Court refused to exercise its plenary power to consider the appeal. *State v. Maddock*, 97 Idaho 610, 549 P.2d 269 (1976).

The court declined to exercise its plenary power to review order of district court granting defendant's motion to dismiss an information charging him with involuntary manslaughter, where appeal by the state was not authorized by § 19-2804 (repealed) as an appeal from a judgment for defendant on demurrer to the information because defendant's motion which was grounded on the insufficiency of evidence at the preliminary hearing did not raise a defense or objection set forth in § 19-1703 as a ground for demurrer. *State v. Blair*, 97 Idaho 646, 551 P.2d 601 (1976).

Where the state appealed from dismissal of an information against a defendant on the ground that the defendant had been denied the right to a speedy trial, the court would not exercise its power of review. *State v. Daugherty*, 98 Idaho 716, 571 P.2d 777 (1977).

The Supreme Court would not give I.A.R. 11(c)(6) a construction which would allow the state an appeal when a rape prosecution was dismissed subsequent to a guilty verdict but prior to entry of judgment, nor would the court exercise its plenary power to review such a dismissal since nothing in the record or historical Idaho jurisprudence suggested that post guilty verdict dismissals have been frequent or are likely to become frequent, and thus, the case did not present a recurring question, the resolution of which would be of substantial importance in the administration of justice in this state. *State v. Dennard*, 102 Idaho 824, 642 P.2d 61 (1982).

Where state did not appeal from order withholding judgment, it could not appeal from previous order reducing charges from felony to misdemeanor as such order did not fall within the language of I.A.R. 11(c)(3) or (6); nor would Supreme Court exercise its plenary power to hear such appeal, under this section or treat the appeal as a petition for a writ of review under § 7-201 and I.A.R. 43. *State v. Molinelli*, 105 Idaho 833, 673 P.2d 433 (1983).

Election Contests.

Under S.L. 1899, p. 33, § 124 (§ 34-2004) in reference to elections and contest of elections, Supreme Court has original jurisdiction in the matter of a contest of the election of district judge. Under the Constitution of this state, it is competent for legislature to authorize the contesting of elections and to prescribe manner and method of conducting same, and to establish or designate court, body, board, or tribunal before which such contests shall take place. *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1902).

Extraordinary Relief.

The Supreme Court will exercise jurisdiction to review a petition for extraordinary relief where the petition alleges sufficient facts concerning a possible constitutional violation of an urgent nature. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 358, 982 P.2d 358 (1999).

Habeas Corpus.

Supreme Court, having jurisdiction to review on appeal decisions of district court in habeas corpus proceedings, will not exercise its original jurisdiction to issue writ save in extraordinary cases. In *re Barlow*, 48 Idaho 309, 282 P. 380 (1929).

Uniform post-conviction procedure act cannot be used as a method of appealing from a judgment of conviction, but neither can habeas corpus. *Dionne v. State*, 93 Idaho 235, 459 P.2d 1017 (1969).

In General.

The Idaho Supreme Court has inherent power to render decisions regarding Idaho law. *Sunshine Mining Co. v. Allendale Mut. Ins. Co.*, 105 Idaho 133, 666 P.2d 1144 (1983).

This section of the Idaho Constitution is considered as limiting and not as granting the Idaho Supreme Court's jurisdiction. *Sunshine Mining Co. v. Allendale Mut. Ins. Co.*, 105 Idaho 133, 666 P.2d 1144 (1983).

The Supreme Court's standard of review is limited to determining whether the Industrial Commission's findings and conclusions are supported by substantial and competent evidence, even though the evidence before the Commission was presented by written record rather than through personal appearances at a hearing. *Blayne v. City of Boise*, 110 Idaho 302, 715 P.2d 972 (1986).

Industrial Commission.

Conflicting medical testimony, standing alone, is not sufficient to defeat the substantial evidence standard of review that the Supreme Court must follow when reviewing the findings of the Industrial Commission. *Harrison v. Osco Drug, Inc.*, 116 Idaho 470, 776 P.2d 1189 (1989).

The Industrial Commission's factual deter-

minations will be affirmed by the Supreme Court when said determinations are supported by substantial competent evidence. *Harrison v. Osco Drug, Inc.*, 116 Idaho 470, 776 P.2d 1189 (1989).

The Idaho Constitution mandates that review of the Industrial Commission is limited to questions of law. The findings of the Commission will not be disturbed on appeal when supported by substantial and competent evidence. *Sprague v. Caldwell Transp., Inc.*, 116 Idaho 720, 779 P.2d 395 (1989).

The Supreme Court will not overturn factual findings made by the Industrial Commission when those findings are supported by substantial and competent evidence. *Aldrich v. Lamb-Weston, Inc.*, 122 Idaho 361, 834 P.2d 878 (1992).

Supreme Court's review of decisions of the Industrial Commission is limited to questions of law; accordingly, factual determinations made by the Commission will not be overturned when supported by substantial and competent, though conflicting, evidence; the substantial and competent evidence standard is consistent with the clearly erroneous standard of I.R.C.P. 52(a). *Hart v. Deary High Sch.*, 126 Idaho 550, 887 P.2d 1057 (1994).

On Supreme Court review of Industrial Commission decisions, the Supreme Court reviews questions of fact only to determine if there was substantial and competent evidence to support the findings of the commission, but exercises free review over questions of law under this section and § 72-732. *Langley v. State, Indus. Special Indem. Fund*, 126 Idaho 781, 890 P.2d 732 (1995).

The Industrial Commission's conclusions of law are freely reviewed by the Supreme Court, and the Commission's findings will be upheld if they are supported by substantial and competent evidence, which is evidence that a reasonable mind might accept as adequate and sufficient to support the Commission's conclusions. *Smith v. J.B. Parson Co.*, 127 Idaho 937, 908 P.2d 1244 (1996).

In any review of a decision by the Industrial Commission, the Supreme Court will review questions of fact only to determine whether substantial and competent evidence supports the Commission's findings and will exercise free review over questions of law. *Ogden v. Thompson*, 128 Idaho 87, 910 P.2d 759 (1996).

Supreme court's review of decisions of the Industrial Commission is limited to questions of law. *Branchflower v. State*, 128 Idaho 593, 917 P.2d 750 (1996).

In any review of a decision by the Industrial Commission the supreme court may exercise free review over questions of law. *Vincent v. Dynatec Mining Corp.*, 132 Idaho 200, 969 P.2d 249 (1998).

Intermediate Orders.

Where court order sustained demurrer without leave to plaintiff to amend its second

amended complaint, such an order contemplates a final judgment of dismissal; it is an intermediate order reviewable upon appeal from the final judgment and is not an appealable order, therefore the appeal must be dismissed. *State ex rel. State Bd. of Medicine v. Smith*, 80 Idaho 267, 328 P.2d 581 (1958).

The limitation upon the right of appeal, namely not to permit an appeal from all intermediate orders and decisions of a district court as such would result in a vexatious and intolerable confusion and delay, rendering impossible an orderly and expeditious administration of justice by the courts of the state is a proper limitation and even though defendant respondent had not moved to dismiss the appeal from order sustaining demurrer to complaint without leave to amend, nor otherwise raised the issue, the appeal would be dismissed. *State ex rel. State Bd. of Medicine v. Smith*, 80 Idaho 267, 328 P.2d 581 (1958).

Litigation Against Judges.

Where individual sued all members of the Supreme Court, as well as virtually all members of the bench in northern Idaho, manifested a pattern of initiating litigation against any judge ruling against him and stated and restated his belief that no judge in Idaho could hear his cases, at least until the bar is declared unlawful, the Supreme Court would not declare itself disqualified and would enjoin individual from filing pro se actions without court approval and from filing liens without an attorney. *Eismann v. Miller*, 101 Idaho 692, 619 P.2d 1145 (1980). See also, *Miller v. Johnson*, 541 F. Supp. 1165 (D.D.C. 1982).

Mandamus.

Supreme Court has original jurisdiction to issue writs of mandate. *State ex rel. Capital Inv. Co. v. Lukens*, 48 Idaho 357, 283 P. 527 (1929).

The Supreme Court could not grant a writ of mandate compelling the state auditor to issue certain warrants where the claims involved had not first been presented to the board of examiners as required by Idaho Const., Art. 4, § 18, and a former section regarding appropriation of moneys in state highway fund, but the court was not inhibited from ruling upon the issues raised. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

Where county board of canvassers certifies to county auditor name of first candidate as Republican candidate for probate judge, but auditor mistakenly issues certificate of nomination to another who declines it and second candidate is then designated Republican candidate by Republican county central committee, following which auditor issues certificate of nomination to first candidate, writ of mandamus is proper procedure to determine whether county auditor should be required to cause second candidate's name as Republican

candidate for probate judge to be included on the general election ballot. *Hansen v. Devaney*, 82 Idaho 488, 356 P.2d 57 (1960).

Where issue presented was whether plaintiff, who was appointed by county commissioners, or defendant, elected in the general election, is probate judge for period from general election on November 3, 1964, to date set by legislature for assumption of office by county elective officers, following general election, the proceeding was both for review (certiorari) and for writ of mandate, and the supreme court had jurisdiction to determine the issue. *White v. Young*, 88 Idaho 188, 397 P.2d 756 (1964).

Once the Supreme Court has asserted its original jurisdiction, it may issue writs of mandamus and/or prohibition. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990); *Frank v. Bunker Hill Co.*, 117 Idaho 790, 792 P.2d 815 (1988); *Jensen v. Siemsen*, 118 Idaho 1, 794 P.2d 271 (1990); *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

Plenary Jurisdiction.

The Supreme Court declined to exercise its constitutional plenary power to review rulings on motions in limine where the issues of the exclusion of bad acts evidence and the confidentiality and privilege of communications with and reports from mental health professionals the defendant had previously consulted were not significant enough to warrant the exercise of such jurisdiction. *State v. Young*, 133 Idaho 177, 983 P.2d 831 (1999).

Prohibition.

This section, in providing for issuance of writs of prohibition, contemplates issuance of such writs with the functions declared and defined under existing territorial laws (*Williams v. Lewis*, 6 Idaho 184, 54 P. 619 (1898)), but this case was overruled and it was expressly held that writ of prohibition authorized by the constitution is the common-law writ and will not lie to restrain purely ministerial acts. *Stein v. Morrison*, 9 Idaho 426, 75 P. 246 (1904).

This provision affords adequate remedy by appeal without resort to writ of prohibition. *Natorium Co. v. Erb*, 34 Idaho 209, 200 P. 348 (1921).

This section was taken literally from the California Constitution and, in construing it, the court follows the decisions of that state and holds that the writ of prohibition will not issue to prohibit an executive officer from doing that which the law commands him to do. *Taylor v. Girard*, 54 Idaho 787, 36 P.2d 773 (1934).

Writ of prohibition will issue to prohibit the performance of a ministerial act which is without authority of law. By Holden, J., dis-

senting. *Taylor v. Girard*, 54 Idaho 787, 36 P.2d 773 (1934).

Under this section, the Supreme Court has jurisdiction to issue a writ of prohibition to the clerk of the district court prohibiting him from accepting any filings for the office of county sheriff for the 1966 primary and general elections in violation of the amendment approved in 1964 of Article 18, § 6, of the constitution increasing the term of office of county sheriffs to four years. *Haile v. Foote*, 90 Idaho 261, 409 P.2d 409 (1965).

Supreme Court has jurisdiction to issue extraordinary writs in aid of its appellate jurisdiction, and a writ of prohibition is available to arrest the proceedings of any tribunal, corporation, board or person, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person. *Coeur d'Alene Turf Club, Inc. v. Cogswell*, 93 Idaho 324, 461 P.2d 107 (1969).

Writ of prohibition is not available unless there is no plain, speedy and adequate remedy in the ordinary course of law, however in a proper case this court has the authority to issue such a writ. *Muench v. Paine*, 93 Idaho 473, 463 P.2d 939 (1970).

Public Utilities.

This section authorizes the Supreme Court only limited jurisdiction to review orders to the Public Utilities Commission, and § 61-629 further defines that limited jurisdiction. *Empire Lumber Co. v. Washington Water Power Co.*, 114 Idaho 191, 755 P.2d 1229 (1987), cert. denied, 488 U.S. 892, 109 S. Ct. 228, 102 L. Ed. 2d 218 (1988).

—Commission.

Prior to the adoption of amendment to this section in 1919, Supreme Court could not entertain an appeal directly from the public utilities commission. *Neil v. Public Utils. Comm'n*, 32 Idaho 44, 178 P. 271 (1919).

Pursuant to this provision, S.L. 1921, ch. 72, § 8 (§ 61-623) provides: "The provisions of the Code of Civil Procedure relative to appeals from the district court, except in and so far as they are inconsistent herewith, shall apply to appeals from orders of the public utilities commission." *Capital Water Co. v. Public Utils. Comm'n*, 41 Idaho 19, 237 P. 423 (1925).

Section authorizes legislature to fix scope of appeal from utility commission and by statute the court is limited to a determination whether the commission regularly pursued its authority. This presupposes and necessitates findings of fact by it upon the ultimate facts necessary to be found to support its conclusions, such as the fixing of a reasonable and just rate for telephone service. *Mountain View Rural Tel. Co. v. Interstate Tel. Co.*, 55 Idaho 514, 46 P.2d 723 (1935).

The Supreme Court will not interfere with

the making of public utility rates by the commission as long as the latter regularly pursues its authority within constitutional limitations. In *re Mountain States Tel. & Tel. Co.*, 76 Idaho 474, 284 P.2d 681 (1955).

Public utilities commission in passing upon applications of rival gas companies for certificates of convenience for distribution of natural gas within the state should have considered the fact that one of the companies was equipped to furnish the gas to a large section of the state whereas the other companies were not able to do so. In *re Intermountain Gas Co.*, 77 Idaho 188, 289 P.2d 933 (1955), cert. dismissed, 352 U.S. 801, 77 S. Ct. 20, 1 L. Ed. 2d 37 (1956).

The public utilities commission could not base its order granting a certificate of convenience to a natural gas company on the possible available supply of natural gas to the state in the future, since this constituted speculation. In *re Intermountain Gas Co.*, 77 Idaho 188, 289 P.2d 933 (1955), cert. dismissed, 352 U.S. 801, 77 S. Ct. 20, 1 L. Ed. 2d 37 (1956).

In a proceeding before the public utilities commission relative to the granting of a certificate of convenience for distribution of natural gas in the state, where it appeared that the applicant whose plan was sound, was backed by ample financial and technical support, and it could distribute to a wide area of the state, but the commission granted the application of a rival company whose plan was not sound and who could not distribute over a wide area, the order of the commission was set aside and the proceeding remanded to the commission for further action. In *re Intermountain Gas Co.*, 77 Idaho 188, 289 P.2d 933 (1955), cert. dismissed, 352 U.S. 801, 77 S. Ct. 20, 1 L. Ed. 2d 37 (1956).

Where the evidence showed that the service afforded by other common carriers in the area after the discontinuance of the train was adequate to meet the public needs, also that high quality highways provided direct routes in various directions for private automobiles, the court would take into consideration the limited public use of the passenger service and the expense and net loss to the railroad in finding that the commission had not abused its discretionary power in entering the order authorizing the discontinuance of operation of certain trains. In *re Union Pac. R.R.*, 81 Idaho 300, 340 P.2d 1103 (1959).

It is a function of the commission to determine the issues between two competing applicants for a certificate of public convenience and necessity; the Supreme Court will not review such issues until the commission has acted upon them. In *re Citizens Utils. Co.*, 82 Idaho 208, 351 P.2d 487 (1960).

Where a gas utility was without notice that the continuation of its retail gas appliance

sales business was at issue in a rate hearing the utility was denied the due process right of an opportunity to meet the issue of whether continuation of its retail business was in the public interest, and thus the orders of the utilities commission were set aside and were not upheld in part even though the rate-setting order was properly made. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 113, 540 P.2d 775 (1975).

Where the public utilities commission did not present in its rate increase order the basic facts necessary to support reasonably its conclusion with respect to reasonableness of water utility's operating expenses, the rate increase order was set aside in all respects. *Boise Water Corp. v. Idaho Pub. Utils. Comm'n*, 97 Idaho 832, 555 P.2d 163 (1976).

Final orders of the public utilities commission should ordinarily be challenged either by petition to the commission for rehearing or by appeal to the Supreme Court as provided by §§ 61-626 and 61-627 and this section, since a different rule would lead to endless consideration of matters previously presented to the commission and confusion about the effectiveness of commission orders. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Review of alleged procedural errors occurring in commission proceedings, which are not so substantial as to deny an interested party due process, must be sought either in the Public Utilities Commission's proceedings, by petition for a rehearing made to the Commission after a decision has been rendered, or by appeal to the Supreme Court from a commission order. *Utah-Idaho Sugar Co. v. Intermountain Gas Co.*, 100 Idaho 368, 597 P.2d 1058 (1979).

Where evidence presented to Public Utilities Commission is competent and substantial in support of the findings made and there has been no clear abuse of discretion, the Supreme Court of Idaho is constrained to affirm those findings. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Under this section of the Idaho Constitution, the Idaho Supreme Court has only limited jurisdiction to review decisions of the Public Utilities Commission; on questions of law, "[t]he review on appeal shall not be extended further than to determine whether the commission has regularly pursued its authority. *A.W. Brown Co. v. Idaho Power Co.*, 121 Idaho 812, 828 P.2d 841 (1992).

Supreme court's jurisdiction to review decisions of the Idaho Public Utilities Commission is limited by this section. *Rosebud Enters., Inc. v. Idaho Public Utils. Comm'n*, 128 Idaho 609, 917 P.2d 766 (1996).

Tax Assessments.

The operating property of railroads must be assessed by the board of equalization. If the

board determines that property is operating property, then, and then only, it has the power to assess it, and the board's action in this regard need not be anticipated and stopped by a writ of prohibition but it may be brought to this court, after the determination, by a writ of review. *Ada County v. Bottolfson*, 61 Idaho 64, 97 P.2d 599 (1939).

Unemployment and Accident Compensation.

The Supreme Court is equally bound by findings of fact made by industrial accident board in both cases involving unemployment and industrial accident. *Idaho Mut. Benefit Ass'n v. Robison*, 65 Idaho 793, 154 P.2d 156 (1944).

The constitutional amendment authorizing appeal from industrial accident board direct to Supreme Court was intended to include cases in both industrial accident matters and also unemployment compensation cases. *Idaho Mut. Benefit Ass'n v. Robison*, 65 Idaho 793, 154 P.2d 156 (1944).

Appellant's actions in leaving the jobsite without giving or attempting to give his employer any notice of his leaving on the principal excuse that he felt some concern about his past-due paycheck when he knew his absence from employment as a scaler would result in a shutdown of the entire logging operation were inconsistent with that type of conduct which his employer had a right to expect and were sufficient to support the finding that his conduct was a deliberate disregard of his employer's interest as found by the appeals examiner therefore the jurisdiction of this court being limited to review of questions of law only, the board's findings would not be disturbed. *Watts v. Employment Sec. Agency*, 80 Idaho 529, 335 P.2d 533 (1959).

The board's findings of fact, supported by competent substantial evidence are conclusive upon appeal to the Supreme Court, such court's jurisdiction being limited on review to questions of law only. *Ramsey v. Employment Sec. Agency*, 85 Idaho 395, 379 P.2d 797 (1963); *Alder v. Mountain States Tel. & Tel. Co.*, 92 Idaho 506, 446 P.2d 628 (1968).

Where the Commission found that the claimant voluntarily quit work on June 21, 1977; that his normal shift was from 3:00 p.m. to midnight; he had become dissatisfied with his work for about a year prior to quitting; management daily demanded that he complete unreasonable amounts of work with only a small crew and then demanded explanation for nonperformance; and that claimant received such frequent phone calls after returning home at midnight that he had difficulty getting a night's sleep, the Commission properly found the facts and, applying the statutory law to those facts, determined that claimant had established good cause for quit-

ting, thereby entitling him to benefits. *Mager v. Garrett Freightlines*, 100 Idaho 469, 600 P.2d 773 (1979).

Findings of the Industrial Commission will be disturbed on appeal only when the findings of fact and conclusions of law entered thereon are unsupported by substantial and competent evidence. *Roll v. City of Middleton*, 105 Idaho 22, 665 P.2d 721 (1983).

Determination of whether claimant's unemployment was due to a labor dispute was a factual matter for the Commission to determine; the standard of review of the Supreme Court in compensation cases is whether substantial, competent evidence exists in the record to support the finding. *Peters v. Drake Mechanical*, 108 Idaho 610, 701 P.2d 230 (1985).

Court affirmed denial of unemployment benefits where the Industrial Commission's final decision was that the statements which were made by the employer during a heated argument were not statements which would reasonably be interpreted as discharging the claimant. *Porter v. Gem State Plumbing*, 119 Idaho 54, 803 P.2d 555 (1990).

The Idaho Supreme Court's review of unemployment compensation cases involving factual disputes is restricted to determining whether the findings of fact by the Industrial Commission are supported by substantial and competent evidence in the record. *Taylor v. Burley Care Ctr.*, 121 Idaho 792, 828 P.2d 821 (1991).

Worker's Compensation.

—Appeal to District Court.

Since § 72-1361 provides that appeals from the industrial accident board shall be taken directly to the Supreme Court, after having so provided for this method, an action in the district court for the purpose of reviewing orders of the industrial accident board is thereby precluded. *State v. Concrete Processors, Inc.*, 85 Idaho 277, 379 P.2d 89 (1963).

—Appellate Review.

Findings of fact made by the Industrial Commission are subject to limited appellate review; the court's function is to determine whether the findings are supported by substantial, competent evidence. *Lopez v. Amalgamated Sugar Co.*, 107 Idaho 590, 691 P.2d 1205 (1984).

The court is not bound by conclusions of law drawn by the Industrial Commission; an order of the commission must be set aside where the law is misapplied to the evidence. On questions of law the court exercises free review. *Combs v. Kelly Logging*, 115 Idaho 695, 769 P.2d 572 (1989).

—Constitutionality of Amendment.

The amendment adopted at the November election, 1936, giving the Supreme Court ap-

pellate jurisdiction from orders of the industrial accident board, was properly proposed and properly submitted to the electors and is valid. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

The 1936 amendment of this section, conferring the right of appeal to the Supreme Court directly from a ruling of the industrial accident board, complied with Art. 20 in all respects. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

—Decisions Prior to Amendment.

Appeal lies to Supreme Court from judgment of district court affirming or reversing award of industrial accident board. *McNeil v. Panhandle Lumber Co.*, 34 Idaho 773, 203 P. 1068 (1921).

This section does not confer a right to appeal from a decision of the district court based on an award of the industrial accident board, nor from an order denying a new trial after such decision. *Kelley v. Prouty*, 52 Idaho 743, 19 P.2d 1061 (1933).

—Effect of Board's Finding.

The industrial accident board is an administrative fact-finding body exercising special judicial functions. In the first instance, a claimant must prove his right to compensation before the board. On appeal, where there is a substantial conflict in the evidence, the findings of the board will not be disturbed. *Golay v. Stoddard*, 60 Idaho 168, 89 P.2d 1002 (1939).

Where the Supreme Court, after reading the record and finding that the evidence is far from satisfactory to the effect that the accident and injuries arose in the course of employment, is still unable to say that there is no substantial evidence to support the board's finding, the order of the board will be affirmed. *Potter v. Realty Trust Co.*, 60 Idaho 281, 90 P.2d 699 (1939).

Where there was a substantial conflict in the medical testimony introduced before the industrial accident board, its findings will not be disturbed. *Rand v. Lafferty Transp. Co.*, 60 Idaho 507, 92 P.2d 786 (1939); *Cameron v. Bradley Mining Co.*, 66 Idaho 409, 160 P.2d 461 (1945).

This section limits the court to a review of questions of law and where the evidence reviewed is sufficient to support the award of the board, it should be affirmed. By Morgan, J., dissenting. *McGarrigle v. Grangeville Elec. Light & Power Co.*, 60 Idaho 690, 97 P.2d 402 (1939).

Where the evidence does not support the findings of the industrial accident board but is expressly contrary to it, such as that it is more probable that the after effect of an injury to the head contributed to the shooting of decedent, probabilities are all that are required, and the order of the board will be

reversed. *Brink v. H. Earl Clack Co.*, 60 Idaho 730, 96 P.2d 500 (1939).

In border-line cases in which to the board it seems reasonably clear that such case falls on one side, while to counsel it may seem to fall on the other, the order of the board will be affirmed. *Skeen v. Sunshine Mining Co.*, 60 Idaho 741, 96 P.2d 497 (1939).

This section limits the jurisdiction of the Supreme Court on appeal from the orders of the industrial accident board to a review of questions of law. Board's finding supported by substantial evidence is conclusive on appeal but whether employee was injured in the course of employment is strictly one of law subject to review. *Totten v. Long Lake Lumber Co.*, 61 Idaho 74, 97 P.2d 596 (1939).

Where the facts appearing in a compensation case are in conflict, but which, if uncontradicted, would be sufficient to support the award of the industrial accident board, it will be affirmed on appeal; and the conflict may appear from the evidence of witnesses or stipulation of the parties. *Knight v. Younkin*, 61 Idaho 612, 105 P.2d 456 (1940).

Greater weight should not be given to the findings of fact of the industrial accident board than those of the district court. *Phipps v. Boise St. Car Co.*, 61 Idaho 740, 107 P.2d 148 (1940).

Unless the industrial accident board or a majority of the members hear a part of the evidence and see some of the witnesses, its findings are not conclusive on the Supreme Court, even under the above section as amended in 1936. *Phipps v. Boise St. Car Co.*, 61 Idaho 740, 107 P.2d 148 (1940).

The Supreme Court will not disturb a finding by the industrial accident board where the witness had personally appeared and testified before the board, and the evidence was of such nature as might lead different minds to different conclusions. *Fackenthall v. Eggers Pole & Supply Co.*, 62 Idaho 46, 108 P.2d 300 (1940).

A finding that claimant's condition was substantially the same as it had been more than a year earlier on the date of the entry of an award of compensation for the loss of a kidney, which had been removed as a result of the injury, was supported by claimant's own testimony with respect to his physical condition, as well as the testimony of physicians, and, hence, would not be disturbed by the Supreme Court on appeal from the board's order denying additional compensation. *Bower v. Smith*, 63 Idaho 128, 118 P.2d 737 (1941).

Findings of the industrial accident board, when supported by substantial competent evidence, will not be disturbed on appeal. *Bower v. Smith*, 63 Idaho 128, 118 P.2d 737 (1941); *Stroschein v. Shay*, 63 Idaho 360, 120 P.2d 267 (1941); *Barker v. Russell & Pugh Lumber*

Co., 64 Idaho 45, 127 P.2d 772 (1942); *Benson v. Jarvis*, 64 Idaho 107, 127 P.2d 784 (1942); *In re Cain*, 64 Idaho 389, 133 P.2d 723 (1943); *Jensen v. Bohemian Breweries, Inc.*, 64 Idaho 679, 135 P.2d 442 (1943).

Findings of the industrial accident board as to the reasonable value of medical and surgical services rendered to an injured employee by physician, based on conflicting evidence, could not be disturbed on appeal where there was competent evidence supporting the industrial accident board's conclusions. *Epperson v. Texas-Owyhee Mining & Dev. Co.*, 63 Idaho 251, 118 P.2d 745 (1941).

Under the amendment of 1936 to this section, it is the duty of the industrial accident board to decide the sufficiency of evidence, to sustain award, and this duty is not altered by the fact that the evidence is conflicting. *Clayton v. Hercules Mining Co.*, 63 Idaho 301, 119 P.2d 890 (1941).

Under this section, as amended in 1936, unless the findings of the industrial accident board are supported by substantial, competent evidence, they are not conclusive on appeal, and whether they are so supported presents a question of law for the court. *Paull v. Preston Theatres Corp.*, 63 Idaho 594, 124 P.2d 562 (1942).

Under this section, as amended in 1936, the province of the industrial accident board is to weigh the evidence, and that of the Supreme Court to pass on questions of law only. *Dyre v. Kloepper & Cahoon*, 64 Idaho 612, 134 P.2d 610 (1943); *Jensen v. Bohemian Breweries, Inc.*, 64 Idaho 679, 135 P.2d 442 (1943).

Members of industrial accident board are the final judges of weight and credence to be given opinions of experts. *Cameron v. Bradley Mining Co.*, 66 Idaho 409, 160 P.2d 461 (1945).

Since the record failed to disclose that respondent's blindness was superinduced other than through an accidental injury and there was no evidence that it was caused by Hareda's disease, there is no alternative other than to affirm the award. *Wells v. Potlatch Forests, Inc.*, 67 Idaho 420, 183 P.2d 202 (1947).

Finding of industrial accident board will not be disturbed on appeal where the board's findings that the accident occurred at a date which put employee's action outside the statute of limitations of § 72-407 (repealed, now see § 72-706) were based on secondary evidence which became primary in light of its admission without objection. *Clevenger v. Potlatch Forests, Inc.*, 82 Idaho 383, 353 P.2d 396 (1960).

The Constitution of the state admonishes the Supreme Court that its review in compensation cases is limited to questions of law and the court can neither weigh the evidence nor make findings of fact. *Harrison v. Lustra*

Corp. of Am., 84 Idaho 320, 372 P.2d 397 (1962).

The findings of the industrial accident board in a compensation proceeding when supported by competent, substantial though conflicting evidence will not be disturbed by the supreme court on appeal. *Findley v. Flanagan*, 84 Idaho 473, 373 P.2d 551 (1962); *Duerock v. Acarregui*, 87 Idaho 24, 390 P.2d 55 (1964).

That the board may have given more weight to the testimony of the doctors in its determination of the extent of permanent disability of the claimant, is not grounds for reversal if the findings and award of the board are supported by competent and substantial evidence. *Lane v. General Tel. Co.*, 85 Idaho 111, 376 P.2d 198 (1962).

Although the findings of fact of the industrial accident board, if they are supported by substantial, competent evidence, are binding on the court, it is within the province of the court to set aside an award not supported as a matter of law. *Spanbauer v. Peter Kiewit Sons' Co.*, 93 Idaho 509, 465 P.2d 633 (1970).

The Supreme Court will not substitute its views of the facts for the findings of fact made by the industrial commission if the findings are supported by substantial evidence. *Troutner v. Traffic Control Co.*, 97 Idaho 525, 547 P.2d 1130 (1976).

—In General.

Under this section, as amended in 1936, an appeal from an order of the industrial accident board must be prosecuted directly to the Supreme Court. *Pierstorff v. Gray's Auto Shop*, 58 Idaho 438, 74 P.2d 171 (1937).

Where, prior to the amendment of this section adopted in 1936, which amendment abolished appeals to the district court from the industrial accident board, and the latter court had erroneously dismissed an appeal, and on appeal to the Supreme Court the case was fully briefed and argued, the Supreme Court will decide it on the merits rather than remand it to the district court, in view of the above mentioned amendment. *Long v. State Ins. Fund*, 60 Idaho 257, 90 P.2d 973 (1939).

The Supreme Court must presume that the amendment contemplated the law as it had been announced by the Supreme Court. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940); *Phipps v. Boise St. Car Co.*, 61 Idaho 740, 107 P.2d 148 (1940).

Under this section, as amended in 1936, only questions of law are presented for review on appeal. *Benson v. Jarvis*, 64 Idaho 107, 127 P.2d 784 (1942); *Wade v. Pacific Coast Elevator Co.*, 64 Idaho 176, 129 P.2d 894 (1942); *Cameron v. Bradley Mining Co.*, 66 Idaho 409, 160 P.2d 461 (1945); *Wells v. Potlatch Forests, Inc.*, 67 Idaho 420, 183 P.2d 202 (1947).

Findings and conclusions of the industrial

accident board will not be disturbed by Supreme Court on appeal, if supported by competent and substantial evidence. In re *Smith*, 72 Idaho 8, 236 P.2d 87 (1951); *Shumaker v. Hunter Lease & Gold Hunter Mines*, 72 Idaho 173, 238 P.2d 425 (1951); *Kernaghan v. Sunshine Mining Co.*, 73 Idaho 106, 245 P.2d 806 (1952); *Brewster v. McComb*, 78 Idaho 228, 300 P.2d 507 (1956); *Moeller v. Volco Bldrs.' Supply, Inc.*, 81 Idaho 349, 341 P.2d 447 (1959); *Bean v. Employment Sec. Agency*, 81 Idaho 551, 347 P.2d 339 (1951); *Beutler v. MacGregor Triangle Co.*, 85 Idaho 415, 380 P.2d 1 (1963); *Atkins v. C. B. Eaton & Sons, Inc.*, 92 Idaho 172, 438 P.2d 917 (1968).

Finding of board of want of "hazardous exposure" would be construed as a finding of want of "injurious exposure" as required by statute where evidence would support finding of lack of "injurious exposure." *Kernaghan v. Sunshine Mining Co.*, 73 Idaho 106, 245 P.2d 806 (1952).

Supreme Court in reviewing action of industrial accident board will only determine whether findings of board are supported by competent and substantial evidence. *Smith v. Potlatch Forests, Inc.*, 74 Idaho 470, 264 P.2d 684 (1953); *Peterson v. Sunset Minerals, Inc.*, 75 Idaho 354, 272 P.2d 692 (1954); *Yanzick v. Sunset Minerals, Inc.*, 75 Idaho 384, 272 P.2d 696 (1954).

The condition of claimant's health and ability to work is a question of fact for the industrial accident board whose finding based on substantial and competent evidence will not be disturbed on review. *Turner v. Boise Lodge No. 310*, 77 Idaho 465, 295 P.2d 256 (1956).

On appeal from orders of the industrial accident board, the Supreme Court is limited to a review of questions of law; findings of the board will not be disturbed on appeal if they are supported by competent and substantial evidence. In re *Walker's Claim*, 80 Idaho 420, 332 P.2d 199 (1958).

Since the Supreme Court's review of the decision of the industrial accident board is limited, the court can neither weigh the evidence nor make findings of fact. *Andrus v. Boise Fruit & Produce Co.*, 84 Idaho 245, 371 P.2d 256 (1962).

The rule that doubtful worker's compensation cases should be resolved in favor of the awarding of compensation does not apply to a review of industrial accident board's findings of fact which are supported by substantial, competent evidence. *Bennett v. Bunker Hill Co.*, 88 Idaho 300, 399 P.2d 270 (1965).

The rule that positive testimony is entitled to more weight than negative testimony does not apply to the appellate court's examination of the record of proceedings in a workmen's compensation case. The weight to be given the testimony, the credibility of the witnesses and

the reasonable conclusions and inferences to be derived from the record are peculiarly within the province of the board, and not of this court. *Bennett v. Bunker Hill Co.*, 88 Idaho 300, 399 P.2d 270 (1965).

Whether or not the claimant's employment was casual was a question of law, the determination of which by the industrial accident board was a proper subject for review by the Supreme Court under this section. *Wachtler v. Calnon*, 90 Idaho 468, 413 P.2d 449 (1966).

In an appeal from the industrial accident board where the decedent died from the rupture of an aneurysm on an artery in the brain and medical evidence was conflicting as to the probable cause of the rupture, the board's finding that the rupture was not the result of the decedent's employment was sustained. *Tipton v. Jansson*, 91 Idaho 904, 435 P.2d 244 (1967).

With conflicting evidence as to the date the disabling accident occurred, as to which accident was the cause of the claimant's disability, and as to when the claimant became mentally incompetent, findings of the board that the claim was barred by failure to file within one year, that the statute of limitations was not tolled by the claimant's mental incompetency, and that his disability was not caused by the accident upon which his claim was based could not be reviewed on appeal to the Supreme Court. *Gregg v. Orr*, 92 Idaho 30, 436 P.2d 245 (1967).

In worker's compensation appeals, Supreme Court is limited in its study to questions of law. *Madron v. Green Giant Co.*, 94 Idaho 747, 497 P.2d 1048 (1972); *Ledesma v. Bergeson*, 99 Idaho 555, 585 P.2d 965 (1978).

The industrial accident board is the arbiter of conflicting evidence presented in a claim under the Workmen's Compensation Law, and if the board's determination is supported by substantial, competent evidence, it will not be disturbed on appeal. *Hamby v. J.R. Simplot Co.*, 94 Idaho 794, 498 P.2d 1267 (1972), (decision prior to 1995 amendment).

Order of industrial accident board will not be set aside where appellants fail to establish from the facts any material conflict between the record and the findings of the board and the findings are supported by substantial, competent evidence. *Clark v. Sage*, 95 Idaho 79, 502 P.2d 323 (1972).

The Supreme Court's review of unemployment compensation cases is limited by the Idaho Constitution and prior court decisions to reviewing only questions of law, and review in cases involving factual disputes is restricted to determining whether findings of fact by the industrial commission are supported by substantial and competent evidence in the record. *Booth v. City of Burley*, 99 Idaho 229, 580 P.2d 75 (1978).

On appeal from decisions of the industrial

commission, the scope of review is limited to questions of law, and the commission's findings of fact will not be disturbed on appeal when they are supported by substantial though conflicting evidence. *Meyer v. Skyline Mobile Homes*, 99 Idaho 754, 589 P.2d 89 (1979).

Review of unemployment compensation cases is limited to questions of law, and the court will not adopt findings at variance with those of the Industrial Commission, providing the Commission's findings are supported by substantial and competent evidence in the record. *Harris v. Green Tree, Inc.*, 100 Idaho 227, 596 P.2d 99 (1979).

The Supreme Court's review of the decisions of the Industrial Commission is limited to questions of law and to a determination whether the commission's findings are supported by substantial and competent evidence. *Parker v. St. Maries Plywood*, 101 Idaho 415, 614 P.2d 955 (1980).

Appellate review of findings of fact made by the Industrial Commission is limited in scope and does not entail a de novo determination of fact. The Supreme Court is not concerned with whether such court would have reached the same conclusion, but rather, with whether the findings by the commission are supported by substantial, competent evidence. *Graham v. Larry Donohoe Logging*, 103 Idaho 824, 654 P.2d 1377 (1982).

The findings of the Industrial Commission will not be disturbed on appeal if they are supported by substantial evidence in the record. *Wood v. Quali-Dent Dental Clinics*, 107 Idaho 1020, 695 P.2d 405 (1985).

The scope of review on appeal from decisions of the Industrial Commission is limited to questions of law, and the commission's findings of fact will not be disturbed on appeal when they are supported by substantial, though conflicting, evidence. *Puckett v. Idaho Dep't of Cors.*, 107 Idaho 1022, 695 P.2d 407 (1985).

In reviewing Industrial Commission decisions the Supreme Court must determine whether the Industrial Commission's findings of fact are supported by substantial competent evidence. *Snyder v. Burl C. Lange, Inc.*, 109 Idaho 167, 706 P.2d 56 (1985).

The evaluation and weighing of conflicting testimony is a function left to the sound discretion of the Industrial Commission as factfinder, and will not be disturbed on appeal unless clearly erroneous as a matter of law. *Nycum v. Triangle Dairy Co.*, 109 Idaho 858, 712 P.2d 559 (1985).

The scope of the Supreme Court's review in compensation cases is limited to questions of law and determinations of whether the Industrial Commission's findings of fact are supported by substantial, competent evidence. Determinations of permanent impairment

and temporary disability are questions of fact for the Industrial Commission. If conflicting evidence exists, the Supreme Court will not overturn factual findings, supported by substantial and competent evidence; it does not scrutinize the weight and credibility of the evidence relied on by the Commission and will disturb the Commission's findings regarding weight and credibility only if they are clearly erroneous. *Soto v. J.R. Simplot*, 126 Idaho 536, 887 P.2d 1043 (1994).

In appeals from the Industrial Commission, appeals courts are limited to reviewing questions of law. *Teevan v. Office of Att'y Gen.*, 130 Idaho 79, 936 P.2d 1321 (1997).

Appellate court's review of unemployment compensation cases is limited to reviewing only questions of law. *Conrad v. State, Dep't of Emp.*, 130 Idaho 187, 938 P.2d 1225 (1997).

The Supreme Court limits the scope of its review to questions of law and determinations of whether the Commission's findings of fact are supported by substantial competent evidence; construes the record most favorably to the party prevailing below and does not try the matter anew. *Hart v. Kaman Bearing & Supply*, 130 Idaho 296, 939 P.2d 1375 (1997).

—Sufficiency of Findings.

Under this section as amended in 1936, where the industrial accident board fails to make an essential finding, the case will be remanded to the board with directions to make such finding, since it is the duty of the board and not the court to make findings of fact. *Dyre v. Kloepper & Cahoon*, 64 Idaho 612, 134 P.2d 610 (1943).

The rule of *Phipps v. Boise St. Car Co.*, (61 Idaho 740, 107 P.2d 148 (1940)) to the effect that unless the industrial accident board or a majority of the members hear a part of the evidence and see some of the witnesses, its findings are not conclusive on the Supreme Court, may be waived by stipulation entered into before the industrial accident board that one or more members may hear the evidence and others read it with the same effect as if all were present. *Bishop v. Morrison-Knudson Co.*, 64 Idaho 806, 137 P.2d 963 (1943).

Workmen's compensation board's finding as to character of employment is binding on appeal if supported by substantial and competent evidence. *Doyal v. Hoback*, 75 Idaho 431, 272 P.2d 313 (1954).

Review of order of board fixing medical rates under former law is limited to questions of law. *In re Idaho Hosp. Ass'n*, 76 Idaho 34, 277 P.2d 287 (1954).

It is only in cases where the evidence is not conflicting and not in dispute that the application of law to the undisputed facts raises a question of law granting the Supreme Court jurisdiction on appeals from the Industrial Accident Board. *Miller v. Bingham County*, 79

Idaho 87, 310 P.2d 1089 (1957).

The finding of the board that claimant failed to prove more than a possibility that the injury to her husband contributed to or hastened death was conclusive, the claim being based upon the asserted ground that the injury sustained in the fall aggravated pre-existing infirmities and thus contributed to and hastened death which was directly due to nephritis. *Peterson v. Jerome Coop. Creamery Ass'n*, 79 Idaho 406, 319 P.2d 187 (1957).

If the order of the industrial accident board is clearly unsupported as a matter of law, it is within the province of the Supreme Court to set it aside. *Duncan v. Jacobsen Constr. Co.*, 83 Idaho 254, 360 P.2d 987 (1961); *Beutler v. MacGregor Triangle Co.*, 85 Idaho 415, 380 P.2d 1 (1963); *Hix v. Potlatch Forests, Inc.*, 88 Idaho 155, 397 P.2d 237 (1964).

Since there was evidence as to continued inquiries and effort to determine whether claimant's condition had become static and the furnishing of medical help and appliances, tending to support the view that the employer and surety did not intend to insist upon the limitation rights, the court would be bound by the rule that the findings of the accident board when supported by competent, substantial, though conflicting evidence, will not be disturbed on appeal. *Lindskog v. Rosebud Mines, Inc.*, 84 Idaho 160, 369 P.2d 580 (1962).

There being ample testimony to support the finding that workman was not permanently and totally disabled, such finding of fact by the board will not be disturbed by this court. *Lane v. General Tel. Co.*, 85 Idaho 111, 376 P.2d 198 (1962).

The evidence was sufficient to support the board's finding that claimant's injury arose in the course of his employment, in that the truck broke loose from the tow truck, ran away out of control causing claimant to jump therefrom, sustaining his injury, all of which took place (a) within the period of employment, (b) at a place where the employee may reasonably be, and (c) while he is reasonably fulfilling the duties of the employment or doing something incidental to it. *Beutler v. MacGregor Triangle Co.*, 85 Idaho 415, 380 P.2d 1 (1963).

In the process of determining the ultimate facts in issue, the drawing of reasonable conclusions and inferences from the evidentiary facts is also within the prerogative of the fact findings authority. *Duerock v. Acarregui*, 87 Idaho 24, 390 P.2d 55 (1964).

Where medical experts disagreed as to whether death of a man suffering from acute myocardial infarction who died from a coronary thrombosis or occlusion while loosening gravel about a manhole top with a pick was due to overexertion or strain, the finding of the board will not be set aside on appeal.

Bradshaw v. Bench Sewer Dist., 90 Idaho 557, 414 P.2d 661 (1966).

Findings of fact by the industrial accident board will be sustained if supported by substantial, competent evidence. Johnson v. Boise Cascade Corp., 93 Idaho 107, 456 P.2d 751 (1969); Gradwohl v. J.R. Simplot Co., 96 Idaho 655, 534 P.2d 775 (1975).

Determination of extent of disability is a factual matter, and if supported by substantial, competent evidence, the industrial accident board's finding thereon will not be reversed. Griffin v. Potlatch Forests, Inc., 93 Idaho 174, 457 P.2d 413 (1969).

In an appeal from an Industrial Accident Board ruling, the Supreme Court is limited to questions of law; with respect to factual findings of the board, the Supreme Court is restricted to a determination of whether the findings are supported by substantial and competent evidence. Madron v. Green Giant Co., 94 Idaho 747, 497 P.2d 1048 (1972).

Where claimant appealed industrial commission finding that there was no causal connection between the original industrial accident and claimant's hypertension, competency of the evidence on which the commission had based its findings of fact was not affected by the fact that medical testimony before the commission was in the form of depositions. Gradwohl v. J.R. Simplot Co., 96 Idaho 655, 534 P.2d 775 (1975).

Where evidence was substantial and competent, although conflicting, and supported the finding of the industrial commission of lack of causal connection between the accident and claimant's hypertension, denial of compensation was proper. Gradwohl v. J.R. Simplot Co., 96 Idaho 655, 534 P.2d 775 (1975).

Where the industrial commission's finding that a claimant had left his employment voluntarily without good cause was supported by substantial competent evidence, its conclusion that the claimant was ineligible for unemployment insurance benefits would not be reversed on claimant's contention that the decision was based upon improperly admitted evidence. Nenoff v. Culligan Soft Water, 97 Idaho 243, 542 P.2d 837 (1975).

Where the industrial commission's findings as to the length of time of claimant's temporary total disability and the amount of permanent partial disability were based upon the reports of the physician who initially treated the claimant following the accident and the physician who examined claimant to determine any permanent partial disability, the commission's disability awards were sustained by substantial evidence. Christensen v. Calico Constr. & Dev. Co., 97 Idaho 327, 543 P.2d 1167 (1975).

Where neurosurgeon who treated claimant testified that in his opinion claimant was

suffering from intercostal neuritis as a result of an industrial accident, there was substantial evidence to support commission's finding that employee sustained a disabling injury as a result of a work-related accident. McCoy v. Sunshine Mining Co., 97 Idaho 675, 551 P.2d 630 (1976).

In hearings on claimant's application for full income benefits as surviving widow of employee who was killed when his semi-truck overturned, the commission did not err in its conclusion that there was a lack of substantial evidence in the record that employee's death was caused by intoxication, even though test results revealed that decedent had .117 percent blood alcohol level, where truck stop proprietors testified that employee's behavior was normal and that he did not appear to be intoxicated. Hatley v. Lewiston Grain Growers, Inc., 97 Idaho 719, 552 P.2d 482 (1976).

Where claimant was examined by five doctors following accident and none could state with probability that the pain was directly caused by the accident, and where claimant had previously been treated for upper back pain twice prior to the accident, the decision of the industrial commission denying claim for partial permanent disability was supported by substantial competent evidence under § 72-732 and supportable as a matter of law under this section. George v. American Smelting & Ref. Co., 101 Idaho 781, 621 P.2d 397 (1980).

Where the Industrial Commission found that the claimant, who was living with the decedent at the time of his death but was not married to him, did not hold herself out as married, which finding was supported by substantial, competent evidence and supported the ultimate finding that there was no common-law marriage, appellate court would not disturb commission order denying workmen's compensation benefits to claimant. Graham v. Larry Donohue Logging, 103 Idaho 824, 654 P.2d 1377 (1982).

In the presence of conflicting evidence in workmen's compensation proceedings, the Supreme Court continues to recognize the industrial commission as the arbiter, and acknowledge that the weight to be accorded evidence is within their particular province. Hayes v. Amalgamated Sugar Co., 104 Idaho 279, 658 P.2d 950 (1983).

Findings of fact made by the industrial commission are subject to limited appellate review, and the Supreme Court's function is to determine whether the findings are supported by substantial, competent evidence. Hayes v. Amalgamated Sugar Co., 104 Idaho 279, 658 P.2d 950 (1983).

The factual findings of the Industrial Commission will not be overturned on appeal unless they are unsupported by substantial

and competent evidence; further, the Industrial Commission will be the arbiter of conflicting evidence. *Nelson v. Pumnea*, 106 Idaho 48, 675 P.2d 27 (1983).

Where the record was devoid of any evidence upon which Supreme Court might sustain the Industrial Commission's finding as to the reason for the surety's inaction on claimant's application for hearing, the holding of the commission was unsupported as a matter of law and was reversed. *Nelson v. Pumnea*, 106 Idaho 48, 675 P.2d 27 (1983).

Factual findings reached by the Industrial Commission in unemployment cases will not be overturned by the Supreme Court unless they are not supported by substantial and competent evidence. *Cornwell v. Kootenai County Sheriff*, 106 Idaho 823, 683 P.2d 859 (1984).

Since the question of whether an employee's conduct constitutes misconduct pursuant to subdivision (e) of § 72-1366 is a factual one, the Industrial Commission's finding that an employee was fired for misconduct must be upheld if supported by substantial and competent evidence. *Gatherer v. Doyles Whsle.*, 111 Idaho 470, 725 P.2d 175 (1986).

The Supreme Court is compelled to defer to the findings of the Industrial Commission when those findings are supported by substantial and competent evidence. *Spruell v. Allied Meadows Corp.*, 117 Idaho 277, 787 P.2d 263 (1990).

Where two separate medical panels formulated an impairment rating amounting to twenty percent of the whole person, even though two other doctors formulated higher impairment ratings, there was substantial and competent evidence supporting the Industrial Commission's finding of a twenty percent impairment rating. *Pomerinke v. Excel Trucking Transport*, 859 P.2d 337 (1993).

The question of whether an unemployment compensation claimant has met statutory eligibility requirements is a question of fact for the commission, and if the commission's resolution is supported by substantial and competent evidence, it will not be overturned on appeal. *Clay v. BMC W. Truss Plant*, 127 Idaho 501, 903 P.2d 90 (1995).

Whether a claimant is an employee or an independent contractor is a factual determination, and the Supreme Court will not over-

turn factual findings made by the Industrial Commission when those findings are supported by substantial and competent evidence, even if conflicting evidence exists. *Kiele v. Steve Henderson Logging*, 127 Idaho 681, 905 P.2d 82 (1995).

The determination of whether an injury arose from the course of employment is a question of fact. If there is conflicting evidence, the Supreme Court will not overturn factual findings supported by substantial competent evidence. *Hart v. Kaman Bearing & Supply*, 130 Idaho 296, 939 P.2d 1375 (1997).

Worker's compensation claimant carries the burden of proof that to a reasonable degree of medical probability the injury for which benefits are claimed is causally related to an accident occurring in the course of employment. Proof of a possible causal link is insufficient to satisfy the burden and the issue of causation must be proved by expert medical testimony. *Trimble v. Engelking*, 130 Idaho 300, 939 P.2d 1379 (1997).

Opinions of Attorney General. Should legislation be adopted permitting a public subdivision to voluntary withdrawal from PERSI (Public Employees Retirement System of Idaho), PERSI, while not having a fiduciary duty to challenge the legislation, would be charged with the responsibility of allowing political subdivisions to withdraw from the system and would thus have standing to bring a declaratory judgment action or to bring an original action in the Supreme Court seeking a judicial declaration of the validity of the statute before allowing any withdrawals; thus by obtaining such a declaration prior to actually allowing employers to withdraw, PERSI could avoid the logistical problems that could be created if the statute were declared invalid after a number of employers had already withdrawn and employees brought an action seeking damages for PERSI's breach of its fiduciary duty regarding employee's benefits. OAG 96-1.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1522.

16 Am. Jur. 2d, Constitutional Law, § 331.
16 C.J.S., Constitutional Law, § 169.

§ 10. Jurisdiction over claims against the state. — The Supreme Court shall have original jurisdiction to hear claims against the state, but its decision shall be merely recommendatory; no process in the nature of execution shall issue thereon; they shall be reported to the next session of the legislature for its action.

Cross ref. Declaratory judgments against state, § 10-1201 and notes thereto.

Cited in: *Koon v. Bottolfsen*, 60 F. Supp. 316 (D. Idaho 1944); *Payne v. State Bd. of*

Wagonroad Comm'rs, 4 Idaho 384, 39 P. 548 (1895); Wisconsin Marine & Fire Ins. Co. Bank v. State, 5 Idaho 785, 51 P. 983 (1898); Geo. H. Fuller Desk Co. v. State, 6 Idaho 315, 55 P. 857 (1898); Bragaw v. Gooding, 14 Idaho 288, 94 P. 438 (1908); Whiteway v. State, 19 Idaho 322, 113 P. 98 (1911); Lyons v. Bottolfsen, 61 Idaho 281, 101 P.2d 1 (1940); Taylor v. State, 62 Idaho 212, 109 P.2d 879 (1941); Peck v. State, 63 Idaho 375, 120 P.2d 820 (1941).

ANALYSIS

Claims authorized by legislature.
 Condemnation of state lands.
 Condition precedent.
 Damages for negligence.
 Estoppel.
 Examples of recommendatory judgments.
 Jurisdiction in general.
 State institutions.
 Statute of limitations.

Claims Authorized by Legislature.

This provision has no application to claims already authorized by the legislature, rather it provides jurisdiction and procedure on unliquidated claims which have not been previously authorized by the legislature. Padgett v. Williams, 82 Idaho 114, 350 P.2d 353 (1960).

Condemnation of State Lands.

This section does not authorize an action to condemn state lands to a public use, but such an action is authorized by R.S., § 5212 (see § 7-703) in conjunction with S.L. 1899, p. 381, § 13. Hollister v. State, 9 Idaho 8, 71 P. 541 (1903).

Supreme Court is given jurisdiction by this provision to hear claims against the state and to make "recommendatory" decisions and it has declined to hear any claims not passed upon by the board of examiners. The board derives its authority from the constitution and, while acting in the scope of such authority, courts have no power to direct or control their action. State ex rel. Hansen v. Parsons, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, State ex rel. Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

Condition Precedent.

Supreme Court is given jurisdiction by this provision to hear claims against the state and to make "recommendatory" decisions and it has declined to hear any claims not passed upon by the board of examiners. The board derives its authority from the constitution and, while acting in the scope of such authority, courts have no power to direct or control their action. State ex rel. Hansen v. Parsons, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, State ex rel. Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

Damages for Negligence.

Word "claims" as used in this section does not include a claim for damages caused by carelessness of state's servants, and in absence of a statute making state liable in such cases, no liability exists. Davis v. State, 30 Idaho 137, 163 P. 373, 1918D Ann. Cas. 911 (1917).

The district court is the proper tribunal for adjudication of claims against the state in tort for negligence as this section does not prohibit the district court from having such jurisdiction. Smith v. State, 93 Idaho 795, 473 P.2d 937 (1970).

Estoppel.

Actions for recommendatory judgments under this section raise questions of both law and equity and Supreme Court will not deem fair-minded a contention by the state that a statute is unconstitutional when it has benefited by it to the extent of \$576,004. Alberthsen v. State, 60 Idaho 715, 96 P.2d 437 (1939).

Examples of Recommendatory Judgments.

In proceedings to obtain a decision recommending payment of a claim for constructing a state wagon road, where it appeared that contract price was consumed in paying for original construction of road which was destroyed by high water prior to acceptance of road by state, after which contractors rebuilt washed out portion, court rendered a decision recommending payment by legislature of value of contractor's work. Winters v. State, 5 Idaho 198, 47 P. 855 (1897).

Court gave a decision recommending that legislature pay plaintiff for services as superintendent of state capitol grounds, under employment of capitol building board, board of examiners having disallowed his claim. Daniels v. State, 15 Idaho 940, 98 P. 853 (1908).

Jurisdiction in General.

Supreme Court has no jurisdiction under this provision to command how the board of examiners shall act upon claims against the state. Curtis v. Moore, 38 Idaho 193, 221 P. 133 (1923).

Authority under this section was invoked to recover payment of license fees by foreign corporation while not doing business in state and after attempted withdrawal therefrom. Earl Fruit Co. v. State, 40 Idaho 426, 233 P. 518 (1925).

Trial court has no jurisdiction to enter recommendatory judgment that claim is obligation against state, such jurisdiction being original in Supreme Court. State ex rel. Hoover v. Minidoka County, 50 Idaho 419, 298 P. 366 (1931).

Where a decree does not adjudicate any-

thing against the state and refuses the state any relief under a cross-complaint filed by the attorney general, it does not adjudicate, as such, a claim against the state, required by this section to be brought in the Supreme Court. *Howard v. Cook*, 59 Idaho 391, 83 P.2d 208 (1938).

The Supreme Court's jurisdiction to hear claims against the state not being related to claims for payment of which no appropriation has been made but embracing all claims not included within the classes excepted, it had authority to compel the board of examiners to examine and approve for payment claims of Children's Commission upon determining that they were proper as to form, certification and chargeability against the appropriation. *Jewett v. Williams*, 84 Idaho 3, 369 P.2d 590 (1961).

No conflict exists between article 4, § 18 and this section of the Constitution since § 18 clothes named officers such as the board of examiners with power to examine claims against the state while this section clothes the Supreme Court with original jurisdiction to hear claims against the state, its decision to be recommendatory to the legislature; thus in a case where the board allows such a claim there is no necessity to go into court but if the board rejects a claim then the court may assume jurisdiction to determine the merits of the claim. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

The jurisdiction of the Supreme Court to hear claims against the state conferred by this section is not exclusive, but the state may be sued in district courts for breach of contracts entered into pursuant to legislative

authority. *Grant Constr. Co. v. Burns*, 92 Idaho 408, 443 P.2d 1005 (1968).

State Institutions.

Under this section, Supreme Court is only tribunal in which board of trustees of Albion state normal school can be sued (*Thomas v. State*, 16 Idaho 81, 100 P. 761 (1909)); but regents of the university, created by Art. 9, § 10, seem to come in a different category. *Phoenix Lumber Co. v. Regents of Univ. of Idaho*, 197 F. 425 (C.C.D. Idaho 1908), overruled on other grounds, *Mazur v. Hymas*, 678 F. Supp. 1473 (D. Idaho 1988); *Interstate Constr. Co. v. Regents of Univ. of Idaho*, 199 F. 509 (D. Idaho 1912), overruled on other grounds, *Mazur v. Hymas*, 678 F. Supp. 1473 (D. Idaho 1988); *American Bonding Co. v. Regents of Univ. of Idaho*, 11 Idaho 163, 81 P. 604 (1905); *Moscow Hdwe. Co. v. Regents of Univ. of Idaho*, 19 Idaho 420, 113 P. 731 (1911).

District court has jurisdiction of action for claim against board of regents of state university, since such claim is not against state. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921).

Statute of Limitations.

Supreme Court will not recommend to legislature payment of a claim against state, action on which would be barred by statute of limitations. *Small v. State*, 10 Idaho 1, 76 P. 765 (1904).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1522.

§ 11. District courts — Judges and terms. — The state shall be divided into five (5) judicial districts, for each of which a judge shall be chosen by the qualified electors thereof, whose term of office shall be four (4) years. And there shall be held a district court in each county, at least twice in each year, to continue for such time in each county as may be prescribed by law. But the legislature may reduce or increase the number of districts, district judges and district attorneys. This section shall not be construed to prevent the holding of special terms under such regulations as may be provided by law.

Compiler's notes. A repeal of this section, proposed S.L. 1907, p. 592, H. J. R. 3, and voted upon Nov. 3, 1908, S. L. 1913, p. 668, was declared not to be part of the Constitution, because not regularly submitted and ratified. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909).

Cross ref. Office of district attorney abolished by amendment to Art. 5, § 18.

District courts in general, §§ 1-701 — 1-711.

Nomination and election of judges, §§ 34-701 — 34-708.

Judicial districts, §§ 1-801 — 1-809.

Comp. provisions: Mont. Art. 7, §§ 6, 7, 9.

Utah. Art. 8, §§ 5, 6.

Wyo. Art. 5, §§ 12, 17, 19, 24.

Cited in: *Heitman v. Morgan*, 10 Idaho 562, 79 P. 225 (1905); *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909); *Knight v. Trigg*, 16 Idaho 256, 100 P. 1060 (1909); *Joy v.*

Gifford, 22 Idaho 301, 125 P. 181 (1912); Darling v. Fremstadt, 22 Idaho 684, 127 P. 674 (1912); Budge v. Gifford, 26 Idaho 521, 144 P. 333 (1914); Tway v. Williams, 81 Idaho 1, 336 P.2d 115 (1959); State v. Whelan, 103 Idaho 651, 651 P.2d 916 (1982); State v. Fairchild, 108 Idaho 225, 697 P.2d 1239 (Ct. App. 1985).

ANALYSIS

Number of judges per district.
Vacancies.

Number of Judges Per District.

Power of the legislature to provide for more than one district judge in a judicial district is not limited by this section. It is within the power of the legislature to provide for the appointment or the election of more than one district judge for a judicial district when the business of such district requires. Streeter v. MacLane, 19 Idaho 229, 112 P. 1042 (1911).

Vacancies.

In original proceeding brought by plaintiff for a writ of mandate for warrant in payment of plaintiff's alleged salary as district judge of the 9th judicial district, the court held that the vacancy in the office involved, that of an additional office of district judge in and for the 9th judicial district created by Acts 1957, ch. 15, was not filled by plaintiff in the manner provided for by law, and his claim for compensation was denied, he having served during the month of November, 1958, having been elected at the November general election to take office at the regular term commencing on the 5th day of January, 1959, such office prior to that date to be filled only by the governor upon appointment. Tway v. Williams, 81 Idaho 1, 336 P.2d 115 (1959).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1522, 1526, 1545, 1574.

§ 12. Residence of judges — Holding court out of district — Service by retired justices and judges. — Every judge of the district court shall reside in the district for which he is elected. A judge of any district court, or any retired justice of the Supreme Court or any retired district judge, may hold a district court in any county at the request of the judge of the district court thereof, and upon the request of the governor, or of the chief justice, and when any such request is made or approved by the chief justice it shall be his duty to do so; but a cause in the district court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, and sworn to try the cause. Any retired justice or district judge may sit with the Supreme Court and exercise the authority of a member thereof in any cause in which he is requested by that court so to do, and when requested by the chief justice shall perform such other duties pertaining to the judicial department of government as directed. Compensation for such service shall be as provided by the legislature.

Compiler's notes. As originally adopted, this section provided as follows:

“§ 12. Residence of judges — Holding court out of district. — Every judge of the district court shall reside in the district for which he is elected. A judge of any district court may hold a district court in any county at the request of the judge of the district court thereof, and upon the request of the governor, it shall be his duty to do so; but a cause in the district court may be tried by a judge pro tempore, who must be a member of the bar, agreed upon in writing by the parties litigant, or their attorneys of record, and sworn to try the cause.”

This section was amended as proposed by S.J.R. (S.L. 1965, p. 952) and ratified at the general election on November 8, 1966, to read as it now appears.

Cross ref. Pro tempore trial judges by agreement, I.C.A.R., Rule 4.

Cited in: Gordon v. Conon, 5 Idaho 673, 51 P. 747 (1897); Ferguson v. McGuire, 17 Idaho 141, 104 P. 1028 (1909); Merrill v. Gibson, — Idaho —, 87 P.3d 949 (2004).

ANALYSIS

Disqualification of judge.
Judge pro tem.
Retired judge.
—Service.
Substitute judge.

Disqualification of Judge.

Fact that judge is prejudiced against one of the parties is ground for a change of venue. Day v. Day, 12 Idaho 556, 86 P. 531, 10 Ann. Cas. 260 (1906).

Judge Pro Tem.

This section does not authorize appointment of nonresident as a judge pro tem. *Bramwell v. Guheen*, 3 Idaho 347, 29 P. 110 (1892).

Retired Judge.**—Service.**

A retired district judge may hold a district court position upon the request and order of the chief justice. *State v. Pratt*, 128 Idaho 207, 912 P.2d 94 (1996).

Substitute Judge.

Where district judge from one district holds court in another district and no question is raised as to his authority, it will be presumed, unless record discloses to the contrary, that he is lawfully exercising jurisdiction. Such jurisdiction is exercised under color of authority

and is not open to collateral attack. *Ex parte Allen*, 31 Idaho 295, 170 P. 921 (1918).

In view of the provisions of this section and similar statutory provisions, there exists the presumption that, in the absence of any affirmative showing in the record to the contrary, a district judge from one district who acts in a judicial capacity in another district proceeds upon proper invitation. *Kettenbach v. Walker*, 32 Idaho 544, 186 P. 912 (1919).

Substituted judge is not without jurisdiction because designated by regular judge holding himself disqualified because of prejudice and granting change of judge. *State v. Ward*, 51 Idaho 68, 1 P.2d 620 (1931).

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. II, pp. 1522, 1557.

§ 13. Power of legislature respecting courts. — The legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightly pertains to it as a coordinate department of the government; but the legislature shall provide a proper system of appeals, and regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the Supreme Court, so far as the same may be done without conflict with this Constitution, provided, however, that the legislature can provide mandatory minimum sentences for any crimes, and any sentence imposed shall be not less than the mandatory minimum sentence so provided. Any mandatory minimum sentence so imposed shall not be reduced.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 13. Power of legislature respecting courts. — The legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightly pertains to it as a coordinate department of the government; but the legislature shall provide a proper system of appeals, and regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the Supreme Court, so far as the same may be done without conflict with this Constitution."

This section was amended as proposed by H.J.R. No. 6 (S.L. 1978, p. 1032) and ratified at the general election on November 7, 1978, to read as it now appears.

Sec. to sec. ref. This section is referred to in § 19-2520G.

Cited in: *State ex rel. Allen v. Title Guar. & Sur. Co.*, 27 Idaho 752, 152 P. 189 (1915); *State v. Lundhigh*, 30 Idaho 365, 164 P. 690 (1917); *Evans State Bank v. Skeen*, 30 Idaho 703, 167 P. 1165 (1917); *State v. Grady*, 31 Idaho 272, 170 P. 85 (1918); *Neil v. Public Utils. Comm'n*, 32 Idaho 44, 178 P. 271 (1919);

Taylor v. State, 62 Idaho 212, 109 P.2d 879 (1941); *Batt v. Unemployment Comp. Div. of Indus. Accident Bd.*, 63 Idaho 572, 123 P.2d 1004 (1942); *Cain v. C.C. Anderson Co.*, 65 Idaho 443, 145 P.2d 483 (1944); *Clemens v. Kinsley*, 72 Idaho 251, 239 P.2d 266 (1951); *Foster v. Walus*, 81 Idaho 452, 347 P.2d 120 (1959); *State v. Cardona*, 102 Idaho 668, 637 P.2d 1164 (1981); *Flores v. State*, 109 Idaho 182, 706 P.2d 71 (Ct. App. 1985); *Talbot v. Ames Constr.*, 127 Idaho 648, 904 P.2d 560 (1995).

ANALYSIS

Admission to bar.
Appeals, right to.
Appellate procedure.
— In general.
— Record.
Appropriate exercise of legislative power.
Approval of administrative rules.
Constitutionality declared by legislature.
Contempts.
Delegation of judicial powers.
Disqualification of judge.
District court.
Effect of amendment.

Expenses of court.
 Extent of legislative power.
 Fixed term sentences.
 Jurisdiction of court.
 Legislative powers regarding administrative rules.
 Limitation of jurisdiction.
 Limitations on damages.
 Mandatory sentence.
 Power of courts.
 Probate court.
 Proof of will.
 Supreme court.
 Unauthorized legislative power.
 Worker's compensation.
 — Appeal from judgment.
 — Decision under former law.

Admission to Bar.

Determination of mental and moral qualifications of applicants for the bar has been a judicial function, as evidenced by statutes and judicial decisions in Idaho. *In re Kaufman*, 69 Idaho 297, 206 P.2d 528 (1949).

Legislature has the power to provide minimum qualifications for applicants to the bar, but it is the inherent right of the court to prescribe the maximum qualifications for applicants to the bar, and no legislature can force the courts to accept any candidate for the bar until the courts are themselves satisfied that such qualifications are sufficient. *In re Kaufman*, 69 Idaho 297, 206 P.2d 528 (1949).

Any legislation, which attempts to require courts to admit candidates for the bar on standards other than accepted or established by the courts is unconstitutional, as an invasion of the judicial power, and a violation of the Constitution establishing separate branches of government. *In re Kaufman*, 69 Idaho 297, 206 P.2d 528 (1949).

Statute which required Supreme Court to admit to the bar any graduate of certified law school upon furnishing proof of good moral character, was unconstitutional as an invasion of the judicial function to prescribe maximum qualifications for applicants for the bar. *In re Kaufman*, 69 Idaho 297, 206 P.2d 528 (1949).

Appeals, Right to.

Right of appeal as an absolute and unequalled right is not conferred by this section. *In re Sharp*, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908).

Legislature has power to specify such orders and decisions as shall be directly appealable to Supreme Court. *Utah Ass'n of Credit Men v. Budge*, 16 Idaho 751, 102 P. 390 (1909).

Right to an appeal at law is purely statutory, and legislature may, under this section, prescribe in what cases, under what circumstances and from what courts appeals may be taken, and the manner of taking them. *Weiser*

Irrigation Dist. v. Middle Valley Irrigation Ditch Co., 28 Idaho 548, 155 P. 484 (1916); *State v. Ricks*, 34 Idaho 122, 201 P. 827 (1921).

Right of appeal, if it exists, must be found in constitution and statutes. *State v. Grady*, 31 Idaho 272, 170 P. 85 (1918), overruled on other grounds, *State v. Lewis*, 96 Idaho 743, 536 P.2d 738 (1975).

Both Constitution and statute guarantee to defendant right of appeal from any judgment rendered and entered against him. *State v. Ricks*, 34 Idaho 122, 201 P. 827 (1921).

This section does not confer an absolute right of appeal; the cases and matters in which appeals may be prosecuted and also the procedure are left to the legislature. If the legislature fails to provide any method of appeal or provides that no appeal could be taken, its conclusion would be final. In other words, the right to appeal is purely statutory. *Kelley v. Prouty*, 52 Idaho 743, 19 P.2d 1061 (1933).

The right of appeal is conferred by legislative authority under this section and § 9 of this article. *Miller v. Gooding Hwy. Dist.*, 54 Idaho 154, 30 P.2d 1074 (1934).

It is well settled that appeals are purely statutory, and that the legislature may provide or deny the right of appeal. *Young v. Board of County Comm'rs*, 67 Idaho 302, 177 P.2d 162 (1947).

The limitation upon the right of appeal, namely not to permit an appeal from all intermediate orders and decisions of a district court as such would result in a vexatious and intolerable confusion and delay, rendering impossible an orderly and expeditious administration of justice by the courts of the state is a proper limitation and even though defendant respondent had not moved to dismiss the appeal from order sustaining demurrer to complaint without leave to amend, nor otherwise raised the issue, the appeal would be dismissed. *State ex rel. State Bd. of Medicine v. Smith*, 80 Idaho 267, 328 P.2d 581 (1958).

Where court order sustained demurrer without leave to plaintiff to amend its second amended complaint, such an order contemplates a final judgment of dismissal; it is an intermediate order reviewable upon appeal from the final judgment and is not an appealable order, therefore the appeal must be dismissed. *State ex rel. State Bd. of Medicine v. Smith*, 80 Idaho 267, 328 P.2d 581 (1958).

The right of appeal, except when secured by the Constitution is dependent entirely upon legislative grant. *Villages of Eden & Hazelton v. Idaho Bd. of Hwy. Dirs.*, 83 Idaho 554, 367 P.2d 294 (1961).

An examination of Title 40 and the Constitution fails to disclose any provision for an appeal within the purview of and contemplated by § 40-120; therefore the district court lacked jurisdiction to entertain the ap-

peal of respondent villages as to the location of a highway. *Villages of Eden & Hazelton v. Idaho Bd. of Hwy. Dirs.*, 83 Idaho 554, 367 P.2d 294 (1961).

Appeal attempted to be taken to Supreme Court from an order denying defendant's motion for summary judgment is not authorized by the legislature, which, in turn, is constitutionally authorized to prescribe the system of appeals and therefore such order was not appealable. *Wilson v. DeBoard*, 94 Idaho 562, 494 P.2d 566 (1972).

Where the state appealed from a district court's order of acquittal in a disorderly conduct case, Supreme Court refused to consider appeal which was not authorized by statute and would not exercise plenary power to consider such appeal. *State v. Berlin*, 95 Idaho 225, 506 P.2d 122 (1973).

Appellate Procedure.

—In General.

Legislature is invested by this section with power to provide proper system of appeals. Pursuant to that authority, it enacted S.L. 1915, ch. 80, p. 193 (§ 13-201), wherein it is provided that appeal may be taken to Supreme Court from final judgment. Prior to S.L. 1917, ch. 110, p. 389, appeal could not be perfected from judgment before it was actually entered. *Stout v. Cunningham*, 33 Idaho 83, 189 P. 1107 (1920).

Under this provision, legislature has specifically provided that appeal from order denying change of venue shall not stay proceedings in district court. *Hay v. Hay*, 40 Idaho 627, 235 P. 900 (1925).

The right of appeal and the procedure on appeal are provided for in this section and fixed by statute and it is not optional, or discretionary, to hear an appeal or not hear it. *Long v. State Ins. Fund*, 60 Idaho 257, 90 P.2d 973 (1939).

That provision, of the Idaho dredge mining protection act, which provides for an appeal from the board of land commissioners directly to the Supreme Court is unconstitutional and void as being an attempt to evade judicial processes by legislation. *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957).

Although the proper remedy, as provided by the legislature, of one adjudged in contempt of court is by extraordinary writ and not by appeal, the Supreme Court, where the appeal was not challenged by the respondent, had jurisdiction to consider and resolve the appeal on its merits. *Jones v. Jones*, 91 Idaho 578, 428 P.2d 497 (1967).

—Record.

Proper system of appeals under this article includes not only the character of record to be used upon appeal but also questions which may be raised by record. *State v. Maguire*, 31

Idaho 24, 169 P. 175 (1917); *Boise-Payette Lumber Co. v. McCarthy*, 31 Idaho 305, 170 P. 920 (1918).

Constitution has committed to legislature and not to courts task of prescribing what record on appeal shall contain and method by which it shall be prepared and authenticated. *State v. Ricks*, 34 Idaho 122, 201 P. 827 (1921).

Proper system of appeals includes not only character of record to be used upon appeal but also questions which may be raised by record. *State v. Ricks*, 34 Idaho 122, 201 P. 827 (1921).

Appropriate Exercise of Legislative Power.

Since I.R.C.P. 60(b) does not provide a method of proceeding for modifying a property division in divorce cases where judgment was entered after *McCarty v. McCarty*, 453 U.S. 210, 101 S. Ct. 2728, 69 L. Ed. 2d 589 (1981), and before the Uniform Services Former Spouses Protection Act, under this section the legislature was entitled to enact § 32-713A (now repealed) to provide a method necessary for considering the modification of such property divisions. *Ross v. Ross*, 117 Idaho 548, 789 P.2d 1139 (1990).

The legislature had authority to authorize the modification of divorce judgments in order to provide relief for those women affected by *McCarty v. McCarty*, 453 U.S. 220, 101 S. Ct. 2728, 69 L. Ed. 2d 589 (1981), a decision prohibiting state courts from dividing military retirement benefits according to state community property laws. *Ross v. Ross*, 117 Idaho 548, 789 P.2d 1139 (1990).

The Supreme Court of Idaho has consistently recognized that this section of the Idaho Constitution empowers the legislature to enact procedural rules when such rules are "necessary" because of changing times or circumstances or the absence of a rule from the court, but whether legislative action is "necessary" within the meaning of this section is a constitutional determination to be passed upon by the Supreme Court of Idaho. *State ex rel. Higginson v. United States*, 128 Idaho 246, 912 P.2d 614 (1995).

Approval of Administrative Rules.

Any legislative approval of a rule, which is granted pursuant to §§ 67-5217 and 67-5218, has merely a nonbinding advisory effect upon the Supreme Court in its resolution of legal issues; to permit the legislature to decide what administrative rules do or do not conflict with statutory law would constitute an abrogation of the judicial power in violation of art. 2, § 1, art. 5, § 2 and this section of the Idaho Constitution. *Holly Care Center v. State Dep't of Emp.*, 110 Idaho 76, 714 P.2d 45 (1986).

Constitutionality Declared by Legislature.

The legislature cannot bind the courts by its declaration that an act shall not be con-

strued to be in violation of certain provisions of the Constitution for the limitations of the Constitution are binding and cannot be nullified or avoided by the simple device of declaring them inapplicable. *Village of Moyie Springs v. Aurora Mfg. Co.*, 82 Idaho 337, 353 P.2d 767 (1960).

Contempts.

Legislature has not the authority to restrict the inherent power of court of record to punish for contempt and it can not abridge such power. *McDougall v. Sheridan*, 23 Idaho 191, 128 P. 954 (1913).

Delegation of Judicial Powers.

This section was intended to preserve to the judicial department right and power to finally determine controversies between parties involving their rights and upon whose claims some determination or judgment must be made, and was not intended to prohibit departments of the state government other than the judicial from exercising some judicial or quasi-judicial functions. *McKnight v. Grant*, 13 Idaho 629, 92 P. 989, 121 Am. St. R. 287 (1907).

The language of this section is incapable of any interpretation which will justify depriving the courts of the power to glean ultimate facts from disputed testimony or which will invest that power in an administrative board and make its findings conclusive upon the courts. By *Morgan, J.*, dissenting. *Larson v. Callahan Canning Co.*, 53 Idaho 746, 27 P.2d 967 (1933).

Neither the department of finance nor its commissioner belongs to the judicial branch of the government and the legislature is prohibited by this section from conferring judicial powers on them. Applied to sales tax act. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

The act creating the state water conservation board violates this section. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dept of Parks v. Idaho Dept of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

This section does not authorize the pre-emption of the court rule making power by the legislature, but only grants limited authority to the legislature to enter the judicial field of rule making when the necessity therefor appears. *R.E.W. Constr. Co. v. District Court*, 88 Idaho 426, 400 P.2d 390 (1965).

A Public Utilities Commission rule which granted its hearing officers the unlimited discretion to decide who should appear and represent parties in various proceedings before that body was an impermissible delegation of authority by the commission under this section, and Const., Art. 2, § 1, since the com-

mission is without authority in the first instance to promulgate any rules allowing third persons unconnected with the entity they are representing to engage in the practice of law in proceedings before it. *Idaho State Bar Ass'n v. Idaho Pub. Utils. Comm'n*, 102 Idaho 672, 637 P.2d 1168 (1981).

Disqualification of Judge.

Trial judge granting request for change of judges because of his disqualification had authority to name another judge before whom the case should be tried; such judge need not be designated by the governor, under this section. *State v. Ward*, 51 Idaho 68, 1 P.2d 620 (1931).

District Court.

This provision is a restriction upon the power of legislature to limit the jurisdiction conferred by the constitution upon the judicial department. Legislature has no power to prescribe a jurisdiction for district courts less broad than that contained in Const., art. 5, § 20. *Fox v. Flynn*, 27 Idaho 580, 150 P. 44 (1915).

Where legislature attempts to go further and limit place at which cause may be heard except upon agreement of parties, it has gone beyond its power in such limitation. *Talbot v. Collins*, 33 Idaho 169, 191 P. 354 (1920).

Legislative action authorizing filing of criminal complaint in district court is not necessary. *State v. Snook*, 34 Idaho 403, 201 P. 494 (1921).

Legislature being without power to limit jurisdiction of district court, statute should not be construed as limiting jurisdiction of that court in action commenced before it. *American Sur. Co. v. District Court*, 43 Idaho 589, 254 P. 515 (1927).

Effect of Amendment.

The amendment to this section effectively circumscribed the power of the courts to suspend a mandatory minimum sentence contained in a statute enacted pursuant to the authority of the constitution; therefore § 37-2732B(a)(7) does not violate the constitution. *State v. Pena-Reyes*, 131 Idaho 656, 962 P.2d 1040 (1998).

Expenses of Court.

Courts of justice have the inherent power and authority to incur and order all such expenses as are necessary for holding of court and discharge of the duties thereof in the administration of justice. *Schmelzel v. Board of County Comm'rs*, 16 Idaho 32, 100 P. 106, 133 Am. St. R. 89, 21 L.R.A. (n.s.) 199 (1909).

Extent of Legislative Power.

The legislative power to grant or take away the power of appeal when it is unsecured by the Constitution is granted by this section of the Constitution and in the event the legisla-

ture sees fit to provide a manner of appeal, the legislative decision is final and conclusive. *Striebeck v. Employment Sec. Agency*, 83 Idaho 531, 366 P.2d 589 (1961).

Since the authority possessed by the courts to sentence necessarily includes power to suspend whole or any part of that sentence in proper cases and this being more than a bare rule of substantive law subject to change by the legislature, inherent right of the judicial department, placing separation of powers concept above and beyond the rule of mandatory action imposed by legislative fiat, the portion of a former law making a sentence mandatory "without any right to exercise judicial discretion in said matter" was unconstitutional and therefore null, void and unenforceable. *State v. McCoy*, 94 Idaho 236, 486 P.2d 247 (1971) (decision prior to 1973 amendment to § 49-1102).

Fixed Term Sentences.

Because the fixed term sentences provided in § 37-2732B does not fall within the specific limitation on inherent judicial power specified in the 1978 amendment to this section, the trial courts are free to exercise their inherent power to impose the fixed term sentences they consider appropriate. *State v. Sarabia*, 125 Idaho 815, 875 P.2d 227 (1994).

Jurisdiction of Court.

Because the question of jurisdiction on appeal from a conviction is fundamental, it must not be ignored when brought to the attention of the Court of Appeals and should be addressed before considering the merits of the substantive appeal. *State v. Rollins*, 103 Idaho 48, 644 P.2d 370 (Ct. App. 1982).

Legislative Powers Regarding Administrative Rules.

Section 67-5218 makes clear that the legislature has reserved unto itself the power to reject an administrative rule or regulation as part of the statutory process and this reservation is not an intrusion on the judiciary's constitutional powers. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Limitation of Jurisdiction.

The Constitution having blocked out the allotment of power to the executive, legislative and judicial departments of government, as a general rule, powers conferred upon one department can not be exercised by another. *Kilbourn v. Thompson*, 103 U.S. 168, 26 L. Ed. 377 (1881); *Union Pac. R.R. v. United States*, 99 U.S. (9 Otto) 700, 25 L. Ed. 496 (1878).

Provision that "an adjudication that any part of this act is unconstitutional shall not affect the validity of the act as a whole or any other provision thereof" is but an aid to interpretation and not an inexorable command; it reverses the presumption that the legislature

intends an act to be effective as an entirety. *Utah Power & Light Co. v. Pfof*, 286 U.S. 165, 52 S. Ct. 548, 76 L. Ed. 1038 (1932).

Legislature has no power to deprive judicial department of any power or jurisdiction which rightly pertains to it as coordinate department of government. *Mays v. District Court*, 34 Idaho 200, 200 P. 115 (1921).

Constitution commits to legislature and not to Supreme Court duty of providing method of procedure in all courts below Supreme Court. *Smith-Nieland v. Reed*, 39 Idaho 788, 231 P. 102 (1924).

This section prohibits the legislature from dictating the interpretation or construction of laws they enact. It is the right of the legislature to make laws but it is the duty of the courts to construe them. Concurring opinion of Justice Morgan. *State ex rel. McKelvey v. Barnes*, 55 Idaho 578, 45 P.2d 293 (1935).

Provision of city charter giving municipal court exclusive jurisdiction of cases involving violation of city ordinances did not prevent district court from having jurisdiction of suit to enjoin defendant from violating city ordinance, since legislature could not limit jurisdiction of district court granted by Const., art. 5, § 20. *Boise City v. Better Homes, Inc.*, 72 Idaho 441, 243 P.2d 303 (1952).

Where either constitutional or vested property rights are involved, the judicial department of the government must afford a remedy for the protection of such rights. A party claiming that such a right has been denied or impaired by the action of either the legislative or executive agencies of the state is constitutionally entitled to a judicial inquiry sufficient in scope to afford adequate relief. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

Limitations on Damages.

Because it is properly within the power of the legislature to establish statutes of limitations, statutes of repose, create new causes of action, and otherwise modify the common law without violating separation of powers principles, it necessarily follows that the legislature also has the power to limit remedies available to plaintiffs without violating the separation of powers doctrine. *Kirkland ex rel. Kirkland v. Blain County Med. Ctr.*, 134 Idaho 464, 4 P.3d 1115 (2000).

Mandatory Sentence.

Section 37-2732B, after its 1995 amendment which deleted the provision allowing the mandatory sentence to be reduced upon the motion of the prosecuting attorney, fully complies with the requirement of this section that mandatory sentences shall not be reduced and therefore § 37-2732B is constitutional. *State v. Puetz*, 129 Idaho 842, 934 P.2d 15 (1997).

Power of Courts.

As to the authority of a trial court to allow post-conviction bail to a convicted criminal made ineligible for bail by a statutory enactment, the issue is one of procedure rather than of substantive law, and where conflict exists between statutory criminal provisions and the Idaho Criminal Rules in matters of procedure, the rules will prevail. Thus, a trial court may allow post-conviction bail under I.C.R. 46(b) to a convicted criminal who is ineligible for bail under § 19-2905. *State v. Currington*, 108 Idaho 539, 700 P.2d 942 (1985).

Since the office of the clerk of the district court is created in Const. Art. 5, the office is within the domain of and subject to the power of the judicial branch; accordingly, the Legislature does not have the authority to deprive the judicial branch of its power and control over the office. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

Probate Court.

Probate court has same control over children's home-finding and aid society as guardian as it would over any other guardian, and this power is one which legislature cannot take from court. *Jain v. Priest*, 30 Idaho 273, 164 P. 364 (1917).

Proof of Will.

A statute requiring that a lost or destroyed will be proved by at least two credible witnesses is not in conflict with the constitutional provision prohibiting the legislature from depriving the judicial department of any of its power or jurisdiction. *Hull v. Cartin*, 61 Idaho 578, 105 P.2d 196 (1940).

This section does not prohibit the enactment of a law prescribing that a lost will must be clearly proved and by the evidence of two witnesses. *Hull v. Cartin*, 61 Idaho 578, 105 P.2d 196 (1940).

Supreme Court.

Legislature can not deprive Supreme Court of its discretionary power to stay proceedings when justice requires it. *Blackwell Lumber Co. v. Empire Mill Co.*, 29 Idaho 236, 158 P. 792 (1916).

After Supreme Court has acquired jurisdiction of cause on appeal and after record is filed, court has exclusive control of case. No other department of government can prescribe where and when court shall proceed in exercise of its jurisdiction without regulating method of proceeding in Supreme Court. *Talbot v. Collins*, 33 Idaho 169, 191 P. 354 (1920).

Provision giving appellate court jurisdiction to issue any writ necessary to exercise of appellate jurisdiction gives it power to compel compliance with statutory method of appeal

wherever possible, but there is no implied power to reverse judgment where method of supplying record as provided by statute is ineffective. *State v. Ricks*, 34 Idaho 122, 201 P. 827 (1921).

Session Laws 1925, chs. 89, 90, pp. 124, 128, amending S.L. 1923, ch. 211, p. 343 (§§ 3-401 — 3-420), does not provide method of procedure in Supreme Court or deprive such court of its jurisdiction or powers. In re *Edwards*, 45 Idaho 676, 266 P. 665 (1928).

The legislature, by enacting § 19-2804 (repealed in 1977), could not infringe on the right of the Supreme Court to hear appeals by the state on criminal matters. *State v. Lewis*, 96 Idaho 743, 536 P.2d 738 (1975).

The Public Utilities Commission's rule of procedure governing appearances and representation was valid to the extent that it allowed representation of a sole proprietorship by the owner, a partnership by the partners or a corporation or nonprofit organization by their officers, since that is in the nature of self-representation by a natural person; however, to the extent that the rule authorized representation of an entity by a third person unconnected with the entity, it violated Const., Art. 2, § 1, and this section, by infringing on the power of the Supreme Court to define and regulate the practice of law. *Idaho State Bar Ass'n v. Idaho Pub. Utils. Comm'n*, 102 Idaho 672, 637 P.2d 1168 (1981).

A careful reading of the Constitution of the State of Idaho and the legislature's codification of the Idaho Supreme Court's rule making power, reveals that this Court's rule making power goes to procedural, as opposed to substantive, rules; the Idaho Supreme Court has stated that "where conflict exists between statutory criminal provisions and the Idaho Criminal Rules in matters of procedure, the rules will prevail"; because of the unique nature of the death penalty, as provided in chapter 27, title 19, Idaho Code, as well as the stringent constitutional protections afforded to a person sentenced to death, § 19-2719(3), which, in turn, creates, defines, and regulates a primary right, is a substantive rule; therefore, the forty-two (42) day time limitation of § 19-2719(3) applies to claims of illegality of a sentence of death, rather than an I.C.R. 35 procedural motion, to which no time limit applies. *State v. Beam*, 121 Idaho 862, 828 P.2d 891 (1992).

Unauthorized Legislative Power.

Former subdivision (a)(8) of § 37-2732B allowed the judge hearing the state's motion to reduce or suspend a fixed term sentence provided elsewhere in § 37-2732B, if the judge found that the defendant had rendered substantial assistance. This hybrid form of fixed term sentence is not authorized by this

section, and is, therefore, unconstitutional, null, void, and unenforceable. *State v. Sarabia*, 125 Idaho 815, 875 P.2d 227 (1994).

Worker's Compensation.

—Appeal from Judgment.

No appeal lies either directly or from an order denying a new trial in a case where a judgment of the district court is entered upon an award of the industrial accident board. *Kelley v. Prouty*, 52 Idaho 743, 19 P.2d 1061 (1933).

—Decision Under Former Law.

Provision of workmen's compensation act

restricting district court to review of questions of law, alone, on appeal is not in contravention of this section. *Brady v. Place*, 41 Idaho 747, 242 P. 314, 243 P. 654 (1925).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1557.

16 Am. Jur. 2d, Constitutional Law, § 331.

16 C.J.S., Constitutional Law, §§ 124-132.

Construction and validity of state provisions governing designation of substitute, pro tempore, or special judge. 97 A.L.R.5th 537.

§ 14. Special courts in cities and towns. — The legislature may provide for the establishment of special courts for the trial of misdemeanors in incorporated cities and towns, where the same may be necessary.

Cited in: *Budge v. Gifford*, 26 Idaho 521, 144 P. 333 (1914).

Municipal Courts.

Provision of city charter giving municipal court exclusive jurisdiction of cases involving violation of city ordinances did not prevent district court from having jurisdiction of suit to enjoin defendant from violating city ordi-

nance, since legislature could not limit jurisdiction of district court granted by Const., art. 5, § 20. *Boise City v. Better Homes, Inc.*, 72 Idaho 441, 243 P.2d 303 (1952).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1572.

§ 15. Clerk of Supreme Court. — The clerk of the Supreme Court shall be appointed by the court, and shall hold his office during the pleasure of the court. He shall receive such compensation for his services as may be provided by law.

Cross ref. Clerk of Supreme Court, §§ 1-402 — 1-408.

Comp. provisions: Wash. Art. 4, § 22.

Wyo. Art. 5, § 9.

Cited in: *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1572, 1575.

§ 16. Clerks of district courts — Election — Term of office. — A clerk of the district court for each county shall be elected by the qualified voters thereof at the time and in the manner prescribed by law for the election of members of the legislature, and shall hold his office for the term of four (4) years.

Cross ref. Clerk of district court, §§ 1-1001 — 1-1003.

Comp. provisions: Wyo. Art. 5, § 13.

Cited in: *United States v. Andersen*, 169 F. 201 (D. Idaho 1909); *Hillard v. Shoshone County*, 3 Idaho 103, 27 P. 678 (1891); *Winter v. Davis*, 65 Idaho 696, 152 P.2d 249 (1944).

ANALYSIS

Control of office.
Deputy court clerk.
Judicial official.

Control of Office.

If the clerk of the district court is unable to comply with, or disagrees with, the directives of the district judge as an officer created by Const. Art. 5, the clerk of the district court can request the administrative judge of the district and ultimately the Supreme Court, through the administrative director of the courts, to review the judge's decision; however, the clerk will have to state with articulated reasons why the directives cannot, or should not, be followed. *Crooks v. Maynard*,

112 Idaho 312, 732 P.2d 281 (1987).

Since the office of the clerk of the district court is created in Const. Ark. 5, the office is within the domain of and subject to the power of the judicial branch; accordingly, the Legislature does not have the authority to deprive the judicial branch of its power and control over the office. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

The district judge, in the exercise of his or her supervisory power over the clerical activities of the clerk of the district court, controls the assignment of persons hired by the clerk. If the clerk makes an assignment of personnel to a judicial function which the judge finds unacceptable, the judge can refuse to accept that assignment; consequently, the district judge has the power to require a reassignment of personnel to assist in judicial-related functions. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

The power and control of the judicial branch over the office of the clerk of the district court is not absolute; it cannot be exercised when the clerk is carrying out the duties of county auditor and recorder. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

Deputy Court Clerk.

The district judge exercised his administra-

tive authority in refusing to accept the assignment of the deputy court clerk, where he did not have the opportunity to appraise her qualifications or integrity. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

The district judge's authority to supervise the clerk of the district court in the discharge of clerical duties does not include the authority or power to dictate to the clerk who shall be hired as an assistant or as a deputy. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

A county board of commissioners does not have the authority to promulgate policies or issue orders which limit or direct the hiring decisions of a clerk of the district court. *Estep v. Commissioners*, 122 Idaho 345, 834 P.2d 862 (1992).

Judicial Official.

The clerk of the court, by virtue of the office created in this section, also is possessed of other powers and duties which are nonjudicial, but the clerk is nevertheless and foremost a judicial official. *Estep v. Commissioners*, 122 Idaho 345, 834 P.2d 862 (1992).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1572.

§ 17. Salaries of justices and judges. — The salary of the justices of the Supreme Court, the salary of judges of the court of appeals, the salary of the judges of the district court and the salary of magistrate judges shall be as provided by statute, and no justice of the Supreme Court, judge of the court of appeals, judge of the district court or magistrate judge, shall be paid his salary, or any part thereof, unless he shall have first taken and subscribed an oath that there is not in his hands any matter in controversy not decided by him which had been finally submitted for his consideration and determination, thirty days prior to the taking and subscribing such oath.

Compiler's notes. This section was amended by S.J.R. 101 (S.L. 1997, p. 1300) and ratified at the general election November 3, 1998, to read as it now appears.

An amendment to this section, proposed S.L. 1907, p. 592, H.J.R. 3, and voted upon November 3, 1908, S.L. 1913, p. 668, increasing salary of Supreme Court justices and leaving the fixing of the salary of district judges entirely to the legislature, was declared not to be part of the constitution on account of noncompliance with requirements for amending. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909).

Cross ref. Salaries of judges, see Title 59, "Public Officers."

Comp. provisions: Wash. Art. 4, § 14.

Wyo. Art. 5, § 17.

Cited in: *Woods v. Bragaw*, 13 Idaho 607, 92 P. 576 (1907); *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909); *Pittam v. Maynard*, 103 Idaho 177, 646 P.2d 419 (1982).

Prompt Decision.

After a case has been submitted for decision to judge or court, prompt decision must be rendered. *McGary v. Steele*, 20 Idaho 753, 119 P. 448 (1911).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1572.

§ 18. Prosecuting attorneys — Term of office — Qualifications. —

A prosecuting attorney shall be elected for each organized county in the state, by the qualified electors of such county, and shall hold office for the term of two years, and commencing with the general election in 1984 shall hold office for the term of four years, and shall perform such duties as may be prescribed by law; he shall be a practicing attorney at law, and a resident and elector of the county for which he is elected. He shall receive such compensation for services as may be fixed by law.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 18. A district attorney shall be elected for each judicial district by the qualified electors thereof, who shall hold office for the term of four years, and perform such duties as may be prescribed by law. He shall be a practicing attorney at law and a resident and elector of the district. He shall receive as compensation for his services \$2500 per annum."

It was amended, as proposed by S.L. 1895, p. 236, S.J.R. No. 5, and ratified at the general election in November, 1896, to read as follows:

§ 18. A prosecuting attorney shall be elected for each organized county in the state, by the qualified electors of such county, and shall hold office for the term of two years, and shall perform such duties as may be prescribed by law; he shall be a practicing attorney at law, and a resident and elector of the county for which he is elected. He shall receive as compensation for his services a sum not less than five hundred dollars per annum nor more than fifteen hundred dollars per annum, to be fixed by the Board of Commissioners of the county at its regular session in July next preceding any general election, and to be paid in quarterly installments out of the County Treasury."

It was again amended, as proposed by S.L. 1927, p. 587, H.J.R. No. 7, and ratified at the general election in November, 1928, to read as follows:

"§ 18. Prosecuting attorneys — Term of office — Qualifications. — A prosecuting attorney shall be elected for each organized county in the state, by the qualified electors of such county, and shall hold office for the term of two (2) years, and shall perform such duties as may be prescribed by law; he shall be a practicing attorney at law, and a resident and elector of the services as may be fixed by law."

It was amended as proposed by S.L. 1982, p. 933, H.J.R. No. 15 and ratified at the general election November 2, 1982 to read as it now appears.

Cross ref. Election and term of officer, § 34-202.

Qualifications, § 31-2601.

Cited in: *Meller v. Board of Comm'rs*, 4 Idaho 44, 35 P. 712 (1894); *Conger v. Board of County Comm'rs*, 5 Idaho 347, 48 P. 1064

(1897); *State v. McGann*, 8 Idaho 40, 66 P. 823 (1901); *Cleary v. Kincaid*, 23 Idaho 782, 131 P. 1117 (1913); *Prichard v. McBride*, 28 Idaho 346, 154 P. 624 (1916); *Derting v. Walker*, 112 Idaho 1055, 739 P.2d 354 (1987).

ANALYSIS

Amendment not self-executing.

As judicial officer.

Duties and compensation.

Qualifications.

Amendment Not Self-Executing.

The amendment to this section substituting county prosecuting attorneys for district attorneys was not self-executing, but required legislation to give it force and effect, and did not go into operation until the time fixed by law for county officers to qualify and enter upon the discharge of their duties. *Hays v. Hays*, 5 Idaho 154, 47 P. 732 (1897).

As Judicial Officer.

It is plain that the intention of the framers of the Constitution and of the people in adopting it was to do away with the office of district attorney for each county, and that, by placing the creation, election, qualifications, tenure of office, and duties of the office of district attorney in that part of the Constitution devoted to the judicial department, they charged him with the performance of duties and the exercise of powers properly belonging to the judicial department. While not making him a judicial officer in the sense of being a judge, yet he was, if not a quasi-judicial or an officer of the court, at least an officer of the judicial department, charged with the exercise of powers properly belonging thereto. *State v. Wharfield*, 41 Idaho 14, 236 P. 862 (1925).

Duties and Compensation.

Foreclosing delinquent tax liens for the county is the official duty of prosecuting attorney, for which he is entitled to no additional compensation. *Givens v. Carlson*, 29 Idaho 133, 157 P. 1120 (1916).

Qualifications.

A complaint could not be made after the general election that the successful candidate for county attorney was not duly licensed to practice law in Idaho when no attempt was

made to correct such error prior to the election. *McNamara v. Wayne*, 67 Idaho 410, 182 P.2d 960 (1947).

Opinions of Attorney General. Since county prosecuting attorneys are "county officers" under this section, it is the duty of the board of county commissioners, pursuant to § 59-906, to fill a vacancy in the office of

county prosecuting attorney by appointing a person with the same qualifications necessary for election to that office. OAG 87-10.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1573, 1574.

§ 19. Vacancies — How filled. — All vacancies occurring in the offices provided for by this article of the Constitution shall be filled as provided by law.

Cross ref. Filling vacancies, Art. 4, § 6.

Cited in: *Moon v. Masters*, 73 Idaho 146, 247 P.2d 158 (1952).

ANALYSIS

District court clerk.

District judge.

Supreme court justice.

District Court Clerk.

A vacancy in the office of clerk of the district court should be filled in the manner provided by legislative power of the state as distinguished from the manner of filling vacancies in the offices of the justices of the Supreme Court. *Winter v. Davis*, 65 Idaho 696, 152 P.2d 249 (1944).

District Judge.

Office of district judge becomes vacant upon creation of an additional district in which no district judge resides. A newly-created office which is not filled by legislative act creating same and for which no provision is made by act for filling same, becomes vacant on the instant of its creation. *Knight v. Trigg*, 16 Idaho 256, 100 P. 1060 (1909).

In original proceeding brought by plaintiff for a writ of mandate for warrant payable to

plaintiff for alleged salary as district judge of the 9th judicial district, the court held that the vacancy in the office involved, that of an additional office of district judge in and for the 9th judicial district created by Acts 1957, ch. 15, was not filled by plaintiff in the manner provided for by law, and his claim for compensation was denied, he having served during the month of November, 1958, having been elected at the November general election to take office at the regular term commencing on the 5th day of January, 1959, such office prior to that date to be filled only by the governor upon appointment. *Tway v. Williams*, 81 Idaho 1, 336 P.2d 115 (1959).

Supreme Court Justice.

Article 4, § 6, vests in the governor the power to fill vacancies in the Supreme Court, and this section has no application whatever to such vacancy, and legislature is given no power whatever by the Constitution to deprive governor of the right of such appointment. *Budge v. Gifford*, 26 Idaho 521, 144 P. 333 (1914).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1578.

§ 20. Jurisdiction of district court. — The district court shall have original jurisdiction in all cases, both at law and in equity, and such appellate jurisdiction as may be conferred by law.

Compiler's notes. An amendment to this section, proposed S.L. 1907, p. 592, H.J.R. 3, and voted upon Nov. 3, 1908, S.L. 1913, p. 668, by which district court was invested with probate jurisdiction, was declared not to be a part of the Constitution on account of non-compliance with requirements for amending. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909).

Cited in: *Murphy v. Russell*, 8 Idaho 151, 67 P. 427 (1901); *First Nat'l Bank v. Glenn*, 10 Idaho 224, 77 P. 623, 109 Am. St. R. 204 (1904); *Dewey v. Schreiber Implement Co.*, 12 Idaho 280, 85 P. 921 (1906); *Vane v. Jones*, 13 Idaho 21, 88 P. 1058 (1907); *Pierson v. State*

Bd. of Land Comm'rs, 14 Idaho 159, 93 P. 775 (1908); *In re Sharp*, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908); *Smith v. Clyne*, 15 Idaho 254, 97 P. 40 (1908); *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909); *McCormick v. Smith*, 23 Idaho 487, 130 P. 999 (1913); *Kent v. Dalrymple*, 23 Idaho 694, 132 P. 301 (1913); *Connolly v. Probate Court*, 25 Idaho 35, 136 P. 205 (1913); *Rowe v. Stevens*, 25 Idaho 237, 137 P. 159 (1913); *Hodges v. Tucker*, 25 Idaho 563, 138 P. 1139 (1914); *State ex rel. Peterson v. Dunlap*, 28 Idaho 784, 156 P. 1141, 1918A Ann. Cas. 546 (1916); *Skeen v. District Court*, 29 Idaho 331, 158 P. 1072 (1916); *State ex rel. Clark v. Cowen*, 29 Idaho 783, 162 P. 674

(1916); *Neil v. Public Utils. Comm'n*, 32 Idaho 44, 178 P. 271 (1919); *American Sur. Co. v. District Court*, 43 Idaho 589, 254 P. 515 (1927); *Batt v. Unemployment Comp. Div. of Indus. Accident Bd.*, 63 Idaho 572, 123 P.2d 1004 (1942); *Horn v. Cornwall*, 65 Idaho 115, 139 P.2d 757 (1943); *Anderson v. Whipple*, 71 Idaho 112, 227 P.2d 351 (1951); *Ashbauth v. Davis*, 71 Idaho 150, 227 P.2d 954 (1951); *State v. Lindsey*, 78 Idaho 241, 300 P.2d 491 (1956); *Good v. Good*, 79 Idaho 119, 311 P.2d 756 (1957); *Pigg v. Brockman*, 79 Idaho 233, 314 P.2d 609 (1957); *Gem-Valley Ranches, Inc. v. Small*, 90 Idaho 354, 411 P.2d 943 (1966); *Wilson v. State*, 90 Idaho 498, 414 P.2d 465 (1966); *Lodge v. Miller*, 91 Idaho 662, 429 P.2d 394 (1967); *Winther v. Village of Weippe*, 91 Idaho 798, 430 P.2d 689 (1967); *Swisher v. State Dep't of Envtl. & Community Servs.*, 98 Idaho 565, 569 P.2d 910 (1977); *Wolf v. State*, 99 Idaho 476, 583 P.2d 1011 (1978); *Sinclair & Co. v. Gurule*, 114 Idaho 362, 757 P.2d 225 (Ct. App. 1988); *State v. Fanning*, 117 Idaho 655, 791 P.2d 36 (Ct. App. 1990).

ANALYSIS

Appellate jurisdiction.
Collateral attack.
Concurrent jurisdiction.
Declaratory judgment jurisdiction.
Election contest.
Equitable jurisdiction.
Jurisdiction in general.
Mandamus.
Municipal courts.
Original jurisdiction.
Probate jurisdiction.
Procedural matters.
Public utilities commission.
Quo warranto.
Res judicata.
Taxation matters.
Worker's compensation.
Youth rehabilitation act.

Appellate Jurisdiction.

Under this provision, legislature has power to provide that acts of assessor or board of equalization might be reviewed, reversed, or modified by district court and it has so provided. *First Nat'l Bank v. Board of County Comm'rs*, 40 Idaho 391, 232 P. 905 (1925).

District court may be given jurisdiction to modify assessments made by county commissioners acting as board of equalization. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

The phraseology directing an appeal from an order of the state board of education under the phraseology "appeal therefrom to a court of competent jurisdiction," employed in the Constitution can mean none other than that the district court is such a court. *Electors v.*

State Bd. of Educ., 78 Idaho 602, 308 P.2d 225 (1957).

The district court did not err in construing the statutory provision for appeal as authorizing a trial de novo where petition of residents of area had had their petition to detach their area from one school district and join it to another denied by order of the state board of education. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

The district court in exercising its appellate jurisdiction in probate matters is limited to deciding the issue previously tried in the probate court and presented by the appeal. *Muncey v. Children's Home Finding & Aid Soc'y*, 84 Idaho 147, 369 P.2d 586 (1962).

Idaho Const., Art. V, § 20 granted trial courts the power to hear all types of cases, both at law and in equity, but it did not grant them perpetual jurisdiction to amend or set aside final judgments in cases that they have heard; Idaho R. Crim. P. 33(c) did not include any provision extending the jurisdiction of the trial court for the purpose of hearing a motion to withdraw a guilty plea, such that where defendant did not appeal a judgment accepting his Alford plea, the judgment became final 42 days later, and the trial court did not have jurisdiction to entertain his motion to withdraw his guilty plea filed over six years later. *State v. Jakoski*, — Idaho —, 79 P.3d 711 (2003).

Collateral Attack.

A decision of a district court in Idaho that a court in another jurisdiction was without authority to determine a question before it is unassailable in either a state or federal court when collaterally attacked, except for fraud or lack of jurisdiction within the Idaho court. *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 60 S. Ct. 44, 84 L. Ed. 85 (1939).

Concurrent Jurisdiction.

District court has concurrent original jurisdiction with justices' courts over actions for violation of the two-mile limit law. *Risse v. Collins*, 12 Idaho 689, 87 P. 1006 (1906).

Jurisdiction of district court and justices' courts in misdemeanor cases of which justice's court has original jurisdiction is a coordinate and concurrent jurisdiction. *State v. Raaf*, 16 Idaho 411, 101 P. 747 (1909).

Declaratory Judgment Jurisdiction.

Where the subject matter of an action involved alleged proposed unlawful action on the part of the director of insurance which allegedly will cause an insurer irreparable harm, and resolution of the issues raised by the complaint required construction of applicable statutes and determination of the legal effect of a prior administrative decision and order and a prior order of a court of a sister state, the claims presented by the insurer in

the district court action involved issues which could be appropriately determined in a declaratory judgment action. *Sierra Life Ins. Co. v. Granata*, 99 Idaho 624, 586 P.2d 1068 (1978).

Election Contest.

At time of adoption of the Constitution of this state, an election contest, as such, was neither recognized by the common law nor the statute law as a "case either at law or in equity," and such proceeding is therefore not necessarily included within the original jurisdiction of district courts. *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908).

Equitable Jurisdiction.

Equitable jurisdiction exists and will be exercised in all cases and under all circumstances where the remedy at law is not adequate, complete, and certain, so as to meet requirements of justice. *Coleman v. Jaggars*, 12 Idaho 125, 85 P. 894, 118 Am. St. R. 207 (1906).

Proceedings in probate and guardianship matters in probate court are not cases at law and equity within the meaning of this section. In *re McVay's Estate*, 14 Idaho 56, 93 P. 28 (1907); *Idaho Trust Co. v. Miller*, 16 Idaho 308, 102 P. 360 (1909).

Where charge made by the commissioner did not show a violation of any of the provisions of the law regulating the business of the brewer, it did not state any grounds for the contemplated revocation or suspension of such brewery license, therefore a court of equity would interfere by injunction to protect the litigant where it was made to appear that irreparable injury would result from further pursuit of the administrative process and the district court being granted jurisdiction in all cases by the Constitution, both in law and in equity, had jurisdiction of the suit by the brewery seeking to enjoin the commissioner from suspending or revoking its license on the grounds of an advertising plan it had been using. *Bohemian Breweries v. Koehler*, 80 Idaho 438, 332 P.2d 875 (1958).

Jurisdiction in General.

Nonresidents of the state of Idaho who appear in an action in an Idaho state court thereby submit themselves to the court's jurisdiction and are bound by a judgment or decree made therein. *Treinius v. Sunshine Mining Co.*, 308 U.S. 66, 60 S. Ct. 44, 84 L. Ed. 85 (1939).

Legislature has no power to prescribe a jurisdiction for district courts less broad than contained herein. *Fox v. Flynn*, 27 Idaho 580, 150 P. 44 (1915).

Use of word "jurisdiction" in statute does not confer jurisdiction as that word is correctly defined, since courts possess jurisdiction without statutory enactment. *State v.*

Jones, 34 Idaho 83, 199 P. 645 (1921).

An action ex delicto based upon tort against real property is local and can not be maintained in any state or county other than that in which land is located. *Taylor v. Sommers Bros. Match Co.*, 35 Idaho 30, 204 P. 472, 42 A.L.R. 189 (1922).

This section vests jurisdiction in the district court to try suits to try title to land and a plea of mental incompetency interposed in such suit would not oust its jurisdiction in favor of the probate court. *Whitney v. Randall*, 58 Idaho 49, 70 P.2d 384 (1937).

Where both parties alleged the validity of a contract, there is no issue to try before the court — no justiciable controversy. *Whitney v. Randall*, 58 Idaho 49, 70 P.2d 384 (1937).

Judicial power cannot be conferred upon any agency of the executive department, in the absence of constitutional authority, where the Constitution has specifically provided for the creation of a judicial system. *State v. Finch*, 79 Idaho 275, 315 P.2d 529 (1957).

The district courts have jurisdiction of actions against the state for breach of contracts entered into pursuant to legislative authority. *Grant Constr. Co. v. Burns*, 92 Idaho 408, 443 P.2d 1005 (1968).

The district court is the proper tribunal for adjudication of claims against the state in tort for negligence. *Smith v. State*, 93 Idaho 795, 473 P.2d 937 (1970).

As a citizen and resident of this state, the defendant was personally subject to the jurisdiction of this state's courts, and no agreement with the government was required. *Parsons v. State*, 113 Idaho 421, 745 P.2d 300 (Ct. App. 1987), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

A judge does not lose jurisdiction over a case by deciding it on legal grounds other than those argued by the parties; he or she may commit error by deciding the case in this fashion, but decisional error is not to be equated with a lack of jurisdiction. *State v. Thompson*, 113 Idaho 466, 745 P.2d 1087 (Ct. App. 1987), modified on other grounds, 114 Idaho 746, 760 P.2d 1162 (1988).

The district court had subject matter jurisdiction over suit to quiet title and to recover possession of real property located in Idaho purchased by plaintiffs at tax sale. *Gage v. Harris*, 119 Idaho 451, 807 P.2d 1289 (Ct. App. 1991).

Where defendant who was a resident of Kootenai County did not challenge the adequacy of service of process personally served in Kootenai County, the district court acquired personal jurisdiction over him in suit to quiet title and recover possession of real property located in Idaho. *Gage v. Harris*, 119 Idaho 451, 807 P.2d 1289 (Ct. App. 1991).

Mandamus.

Provision giving district courts jurisdiction in all cases both at law and equity is broad

enough to include jurisdiction to issue writ of mandate. *People ex rel. Thompson v. Cothorn*, 36 Idaho 340, 210 P. 1000 (1922).

Municipal Courts.

Provision of city charter giving municipal court exclusive jurisdiction of cases involving violation of city ordinances did not prevent district court from having jurisdiction of suit to enjoin defendant from violating city ordinance, since legislature could not limit jurisdiction of district court granted by this section. *Boise City v. Better Homes, Inc.*, 72 Idaho 441, 243 P.2d 303 (1952).

Original Jurisdiction.

District courts have original jurisdiction in all misdemeanor cases, including such misdemeanors as are cognizable in the first instance by probate or justices' courts. *Fox v. Flynn*, 27 Idaho 580, 150 P. 44 (1915).

District court has original jurisdiction in all cases both at law and in equity. *Mays v. District Court*, 34 Idaho 200, 200 P. 115 (1921).

This section is not violated by a statute providing that, upon ascertainment of existence of the facts therein mentioned, district court shall render judgment detaching agricultural lands from a municipality. *Lyon v. Payette*, 38 Idaho 705, 224 P. 793 (1924).

District court had jurisdiction to determine custody of minor child whose parents had been divorced in a county other than that in which complaint for custody had been filed, where plaintiff was a resident of the state and personal service had been obtained against defendant within jurisdiction of court, since statutes governing custody of children had not limited original jurisdiction of district court in cases both at law and equity granted by this section. *Clemens v. Kinsley*, 72 Idaho 251, 239 P.2d 266 (1951).

District court had jurisdiction of proceeding by taxpayer to contest result of election to determine whether county commissioners should issue bonds to build a hospital based on contention that nontaxpayers were permitted to vote, regardless of whether suit was in equity or in law. *Henley v. Elmore County*, 72 Idaho 374, 242 P.2d 855 (1952).

The original jurisdiction of the district court in law and in equity, stemming from this section, cannot be, nor was it intended to be abridged by legislation in the area of neglected, dependent, or delinquent children. *Spaulding v. Children's Home Finding & Aid Soc'y*, 89 Idaho 10, 402 P.2d 52 (1965).

The district court had jurisdiction over the surviving spouse's action to establish ownership of a one-half interest in the airplane jointly owned by the decedent and the defendant and to force a sale of the airplane. *Olson v. Kirkham*, 111 Idaho 34, 720 P.2d 217 (Ct. App. 1986).

Probate Jurisdiction.

Under this section, legislature is the sole and exclusive judge as to the extent and scope of appellate jurisdiction that it will confer upon district courts. It may limit it to any case, or class of cases, or subject-matter, or it may not grant any at all; but legislature can not grant to district court original jurisdiction to hear and determine matters of probate and settlement of estates of deceased persons. In *re McVay's Estate*, 14 Idaho 56, 93 P. 28 (1907).

District court has appellate jurisdiction, with power to try de novo all probate matters. *Fraser v. Davis*, 29 Idaho 70, 156 P. 913, 158 P. 233 (1916).

Appellate jurisdiction of district court in probate case is confined to issues tried in probate courts. District court is without jurisdiction to frame and decide issues not presented to the probate court. *Shaw v. McDougall*, 56 Idaho 697, 58 P.2d 463 (1936).

Strangers to the record in a probate court are not entitled to appeal to the district court from a decree in the probate court; and to be entitled to appeal, they must present their claims and assert their objections in the first instance in the probate court, and then appeal from the ruling thereon. *Shaw v. McDougall*, 56 Idaho 697, 58 P.2d 463 (1936).

Where the determination of the character of property, as community or separate, is involved in the issue as to validity of the alleged case, the district court had jurisdiction to hear and determine the issues presented without encroaching upon the jurisdiction of the probate court. *Gray v. Gray*, 78 Idaho 439, 304 P.2d 650 (1956).

Where by the pleadings of the parties and the pre-trial order of the court, construction of the will was sought by all parties, the district court had before it the necessary parties and the will itself, as it is a court of general jurisdiction and under the circumstances properly could consider the question as one involving a petition for declaratory judgment, although the probate court did not attempt any construction of the will. *Sawyer v. Huff*, 86 Idaho 328, 386 P.2d 563 (1963).

Procedural Matters.

The district court's jurisdiction is not affected by the procedural instrumentality employed, whether by declaratory judgment action or by the traditional remedy. The Declaratory Judgment Statute provides for procedural matters only. *Whitney v. Randall*, 58 Idaho 49, 70 P.2d 384 (1937).

Public Utilities Commission.

Courts are generally a proper forum in which to challenge legislative enactments. The legislature has not attempted to remove from the jurisdiction of trial courts challenges to Idaho Public Utilities Commission related

legislation. *Miles v. Idaho Power Co.*, 116 Idaho 635, 778 P.2d 757 (1989).

Quo Warranto.

The jurisdiction exercised under statute providing for an information in quo warranto to inquire into the authority by which a person holds or exercises an office or franchise falls within the category of cases both of law and equity as used in this section. *State ex rel. Taylor v. Beneficial Protective Ass'n*, 60 Idaho 587, 94 P.2d 787 (1939).

Res Judicata.

Where an Idaho district court, in passing on the right to stock under a trust agreement, determined that a court in another state did not have jurisdiction to decide the question of the right to the stock, such a holding necessarily determined a question as to the Idaho court's jurisdiction so as to preclude relitigation thereof in another suit or action either in the state or federal court. *Treinies v. Sunshine Mining Co.*, 308 U.S. 66, 60 S. Ct. 44, 84 L. Ed. 85 (1939).

The decision of an Idaho district court, a court of general jurisdiction, in passing on the right to stock under an alleged trust agreement, that a Washington probate court was without jurisdiction to determine the question of ownership of such stock, was res judicata in an interpleader suit in the federal court involving the right to the stock, notwithstanding the Idaho decision might have been erroneous where no review had been sought of the decree of the Idaho state court. *Treinies v.*

Sunshine Mining Co., 308 U.S. 66, 60 S. Ct. 44, 84 L. Ed. 85 (1939).

Taxation Matters.

If the action taken was by the county board of equalization, as the minutes recite, then the district court would acquire no jurisdiction on appeal, since the statute provides that appeals from the county board of equalization are to be taken to the state tax commission. *In re Felton's Petition*, 79 Idaho 325, 316 P.2d 1064 (1957).

Worker's Compensation.

Divesting jurisdiction of district court in actions arising under workmen's compensation law is not violative of constitutional provisions. *Brady v. Place*, 41 Idaho 747, 242 P. 314, 243 P. 654 (1925).

Youth Rehabilitation Act.

S.L. 1955, ch. 259, § 3 (repealed, now see § 16-1803) which provided that the probate court had exclusive jurisdiction of any child under the age of 18, who allegedly violated or attempted to violate any federal, state or local law or municipal ordinance, violated this section since it attempted to take away the jurisdiction of the district court of the prosecution of such persons for felonies. *State v. Lindsey*, 78 Idaho 241, 300 P.2d 491 (1956).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1578.

Criminal jurisdiction of municipal or other local court. 102 A.L.R.5th 525.

§ 21. Jurisdiction of probate courts. [Repealed.]

Compiler's notes. As originally adopted this section provided as follows:

"§ 21. The probate courts shall be courts of record, and shall have original jurisdiction in all matters of probate settlement of estates of deceased persons, and appointment of guardians; also jurisdiction to hear and determine all civil cases wherein the debt or damage claimed does not exceed the sum of five hundred dollars, exclusive of interest, and concurrent jurisdiction with justices of the peace in criminal cases."

It was amended as proposed by S.L. 1955, p. 669, S.J.R. No. 4 and ratified at the general election in November, 1956, to read as follows:

"§ 21. The probate courts shall be courts of record, and shall have original jurisdiction in all matters of probate, settlement of estates of deceased persons, and appointment of guardians, and shall have such other jurisdiction in civil and criminal cases as may be conferred by law."

The repeal of this section was proposed by S.L. 1961, p. 1077, H.J.R. No. 10 and such

repeal was ratified at the general election, November 6, 1962.

ANALYSIS

Civil jurisdiction.
Collateral attack.
Courts of record.
Criminal jurisdiction.
Dipsomaniac cases.
District court determining character of property.
Equity cases.
Estates of decedents.
Guardians.
Jurisdiction in general.
Right of appeal.

Civil Jurisdiction.

The order of the probate court authorizing an executor to mortgage specified realty to cover the expenses of alterations and repairs can not be collaterally attacked, since the court had jurisdiction of the estate, the parties and the subject-matter; the remedy in such case is by appeal from the order. *Walker*

Bank & Trust Co. v. Steely, 54 Idaho 591, 34 P.2d 56 (1934).

The probate courts have jurisdiction of actions for claim and delivery when the value of the property involved, if the title thereto be in issue, and damages claimed for the wrongful detention thereof, or damages claimed alone when the title is not in issue, do not exceed \$500.00. Preston A. Blair Co. v. Rose, 56 Idaho 114, 51 P.2d 209 (1935).

This section contains the only limitation on the jurisdiction of probate courts and there is no provision excluding actions of claim and delivery from their jurisdiction except in cases where the amount involved exceeds \$500. Preston A. Blair Co. v. Rose, 56 Idaho 114, 51 P.2d 209 (1935).

Collateral Attack.

Probate courts are courts of record with original jurisdiction in all matters of probate and settlement of estates, and their orders and judgments in regard to such matters can not be collaterally attacked, and can be reviewed only by proper motion in such courts or by appeal from their decisions. Clark v. Rossier, 10 Idaho 348, 78 P. 358, 3 Ann. Cas. 231 (1904); Connolly v. Probate Court, 25 Idaho 35, 136 P. 205 (1913); Fraser v. Davis, 29 Idaho 70, 156 P. 913, 158 P. 233 (1916); Daniels v. Isham, 40 Idaho 614, 235 P. 902 (1925); Larsen v. Larsen, 44 Idaho 211, 256 P. 369 (1927); Knowles v. Kasiska, 46 Idaho 379, 268 P. 3 (1928).

Order of probate court authorizing executrix to borrow money and execute a mortgage is not subject to collateral attack. Walker Bank & Trust Co. v. Steely, 54 Idaho 591, 34 P.2d 56 (1934).

Probate courts are vested with exclusive original jurisdiction in matters of probate, settlement of decedent's estates and guardianships. Under this section, they are made courts of record and their judgments are final and conclusive after time for appeal expires and can not be collaterally attacked. Short v. Thompson, 56 Idaho 361, 55 P.2d 163 (1936).

Probate courts are courts of record in probate matters and their orders and judgments are not subject to collateral attack, but the verity that attaches to other courts of record applies to them. Penn Mut. Life Ins. Co. v. Beauchamp, 57 Idaho 530, 66 P.2d 1020 (1937).

Courts of Record.

Probate courts are courts of record only in the exercise of their probate and administrative jurisdiction. Dewey v. Schreiber Implement Co., 12 Idaho 280, 85 P. 921 (1906).

This section grants to probate court exclusive original jurisdiction in all matters of probate, and as to such matters, probate court is a court of record, to the judgments, records,

and proceedings of which absolute verity is attached. In re McVay's Estate, 14 Idaho 56, 93 P. 28 (1907).

Probate courts are courts of record in probate matters and have exclusive original jurisdiction in such matters and they have jurisdiction to hear and decide petitions and motions to set aside their decrees under this section and statutes enacted pursuant thereto. Moyes v. Moyes, 60 Idaho 601, 94 P.2d 782 (1939); Snow v. Probate Court, 60 Idaho 611, 95 P.2d 844 (1939).

Criminal Jurisdiction.

Probate courts can not be given by the legislature any greater or any less or any other jurisdiction than the criminal jurisdiction of justices' courts without violating this section. State v. Drury, 25 Idaho 787, 139 P. 1129 (1914).

Probate court has jurisdiction of misdemeanors such as violation of statute relating to duty of motorist to stop in the event of certain accidents. State ex rel. Gundlach v. Featherstone, 54 Idaho 640, 34 P.2d 62 (1934).

Where the probate or justice court has jurisdiction to try a charge of misdemeanor, preliminary hearing can not be held, and if one is held and the defendant bound over to answer to the district court, the latter court can not proceed with the trial, being without jurisdiction. State ex rel. Gunlach v. Featherstone, 52 Idaho 640, 34 P.2d 62 (1934).

Dipsomaniac Cases.

Proceedings under "dipsomaniac laws" are paternal in character and in no sense criminal. While analogous to proceedings for appointment of guardian, they are not guardianship proceedings within meaning of this section, vesting such jurisdiction in probate court. Ex parte Hinkle, 33 Idaho 605, 196 P. 1035 (1921).

Provisions of this section giving probate courts exclusive original jurisdiction in guardianship matters does not deprive legislature of power to vest in district courts authority to act under "dipsomaniac law." Ex parte Hinkle, 33 Idaho 605, 196 P. 1035 (1921).

District Court Determining Character of Property.

Where the determination of the character of property, as community or separate, is involved in the issue as to validity of the alleged case, the district court had jurisdiction to hear and determine the issues presented without encroaching upon the jurisdiction of the probate court. Gray v. Gray, 78 Idaho 439, 304 P.2d 650 (1956).

Equity Cases.

This section does not authorize legislature to extend the jurisdiction of probate courts to

actions for enforcement of mechanics' and laborers' liens, mortgages and other liens upon real property; probate courts have no equity jurisdiction except such as they may have in matters of probate, settlement of estates and appointment of guardians. *Dewey v. Schreiber Implement Co.*, 12 Idaho 280, 85 P. 921 (1906).

Probate courts have only limited jurisdiction in equity confined to matters of probate, settlement of estates and the appointment of guardians. *Wilson v. Fackrell*, 54 Idaho 515, 34 P.2d 409 (1934).

Estates of Decedents.

Probate court has no jurisdiction to appoint appraiser under the inheritance tax law unless proceedings to probate estate are pending in that court or decedent has left an estate subject to probate in Idaho. *State ex rel. Peterson v. Dunlap*, 28 Idaho 784, 156 P. 1141, 1918A Ann. Cas. 546 (1916).

Probate court has jurisdiction over administration of estates and when its power is invoked by petition in proper form, it has jurisdiction of subject-matter to be exercised in manner prescribed by law, it being court of exclusive original jurisdiction. *Maloney v. Zipf*, 41 Idaho 30, 237 P. 632 (1925).

The probate court has jurisdiction to enforce a completed gift *inter vivos* by a deceased person where the equitable title has passed thereunder, and only a deed is necessary to make the title marketable. *Wilson v. Fackrell*, 54 Idaho 515, 34 P.2d 409 (1934).

The failure of the probate court to direct executor to deliver possession of realty to deceased's heirs does not deprive the court of jurisdiction. *Walker Bank & Trust Co. v. Steely*, 54 Idaho 591, 34 P.2d 56 (1934).

Where the probate court's jurisdiction once attaches to an estate of the deceased person, it will continue until the property belonging to the estate is distributed. *Walker Bank & Trust Co. v. Steely*, 54 Idaho 591, 34 P.2d 56 (1934).

Orders of a probate court settling the final accounts of executors, administrators, or guardians is a "judgment in rem," which is final and conclusive against all parties after the time for appeal has expired. *Short v. Thompson*, 56 Idaho 361, 55 P.2d 163 (1936).

By this section probate courts are given sole and exclusive "original jurisdiction" in all matters of probate. Objections to petition for testamentary letters must be presented in the probate court in the first instance; they can not be heard to the district court on appeal unless they were in issue in the probate court. *Shaw v. McDougall*, 56 Idaho 697, 58 P.2d 463 (1936).

A probate court has no jurisdiction to decide questions of title to property distributed arising out of contracts between the distributees

after the decree of distribution is entered. *Mason v. Pelkes*, 57 Idaho 10, 59 P.2d 1087, cert. denied, 299 U.S. 615, 57 S. Ct. 319, 81 L. Ed. 453 (1936).

The grant of permission to file a claim against an estate after time fixed by notice had expired because claimant, by reason of being out of the state, had no notice of the time and place to file claims, did not constitute a judgment of the court adjudicating the question whether the claim was barred by limitations. *Penn Mut. Life Ins. Co. v. Beauchamp*, 57 Idaho 530, 66 P.2d 1020 (1937).

The jurisdiction to determine the interest of respective claimants of an estate in Idaho is exclusively in the probate courts, and its determination, whether right or wrong, is conclusive and subject only to be reversed or modified on appeal. The error can not be corrected by an equity proceeding in federal court based on fraud in procuring probate decree. *Asher v. Bone*, 100 F.2d 315 (9th Cir. 1938).

Federal court did not have jurisdiction of proceeding to determine heirship under a will and quiet title to property since proceeding was one for the construction of the will and jurisdiction of such a proceeding was vested exclusively in the probate courts of the state. *White v. White*, 126 F. Supp. 924 (D. Idaho 1954).

Probate courts are courts of record with original jurisdiction in all matters of probate and settlement of estates of deceased persons and their orders and judgments in regard of such matters cannot be collaterally attacked and can be reviewed only by proper motion in such courts or by appeal from their decisions. *In re Lincoln's Estate*, 79 Idaho 131, 312 P.2d 113 (1957).

The probate court had in its jurisdiction to settle title to realty where question involved was whether property was community between decedent and administratrix or separate and to determine to whom it should descend, no strangers being involved in such matters but only rival claimants to heirship. *Lundy v. Lundy*, 79 Idaho 185, 312 P.2d 1028 (1957).

This probate jurisdiction bestowed on the probate court by the Constitution is exclusive. *Lundy v. Lundy*, 79 Idaho 185, 312 P.2d 1028 (1957).

Guardians.

Probate courts are courts of record in matter of appointment of guardians. It is competent for legislature to authorize probate courts to investigate charges preferred concerning delinquent children and to make all necessary orders in relation thereto. *In re Sharp*, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908).

Provision in a legislative act that a home-finding society shall continue as guardian during minority of children unless guardianship is canceled by board of directors of society can not have the effect of depriving probate court of control over society as guardian. *Jain v. Priest*, 30 Idaho 273, 164 P. 364 (1917).

The probate court is not a court of "law and equity" within the meaning of our Constitution. Guardian and his sureties are liable for deposit of funds without order of court, though no issue was tendered over the question in the probate court. *Short v. Thompson*, 56 Idaho 361, 55 P.2d 163 (1936).

A surety on a guardian's bond is charged with notice of every proceeding in a probate court affecting the guardian's liability, and the guardian's appearance in such court was the surety's appearance, and the surety will not be heard to say that it has not had its day in court or that it has been deprived of its property without due process of law. *Short v. Thompson*, 56 Idaho 361, 55 P.2d 163 (1936).

The probate court is a constitutional court vested by this section of the Constitution with exclusive original jurisdiction to deal with and pass upon all matters of guardianship. It may decide that a guardian who has filed a general bond may make a sale without filing an additional bond. *Hill v. Federal Land Bank*, 59 Idaho 136, 80 P.2d 789 (1938); *Moyes v. Moyes*, 60 Idaho 601, 94 P.2d 782 (1939).

In providing for the appointment of guardians, this section makes no exclusion of testamentary guardians, and thus their appointment is controlled therein. *Rotter v. Rotter*, 93 Idaho 462, 463 P.2d 928 (1970).

Jurisdiction in General.

Authorizing probate judge to order publication of summons in district court does not confer upon probate court a jurisdiction in excess of that given it by the Constitution. *McKnight v. Grant*, 13 Idaho 629, 92 P. 989, 121 Am. St. R. 287 (1907).

"A court of general jurisdiction" is one

whose judgment is conclusive until modified or reversed on direct attack, and such court is competent to decide on its own jurisdiction, and exercise such jurisdiction to a final judgment without setting forth the evidence, and the probate court, as regards its jurisdiction in probate and guardianship matters, is "a court of general jurisdiction," and its records import, as to these matters, absolute verity. *Short v. Thompson*, 56 Idaho 361, 55 P.2d 163 (1936); *Moyes v. Moyes*, 60 Idaho 601, 94 P.2d 782 (1939).

District court has jurisdiction to try title to land and a plea of mental incompetency interposed in such suit would not oust its jurisdiction in favor of the probate court. *Whitney v. Randall*, 58 Idaho 49, 70 P.2d 384 (1937).

Probate courts have limited jurisdiction in equity in matters only of probate, settlement of estates, and appointment of guardians. *Chase v. Reid*, 82 Idaho 1, 348 P.2d 473 (1960).

Where the decree of the district court not only purported to dismiss the appeal but also to impose terms on the probate court beyond the issues presented by the appeal to the district court, this was beyond the authority of the district court as the probate is not only the court of original but also exclusive jurisdiction in probate matters. *Muncey v. Children's Home Finding & Aid Soc'y*, 84 Idaho 147, 369 P.2d 586 (1962).

Right of Appeal.

This section confers no absolute right of appeal from an order or judgment of probate court, but leaves it to the discretion of legislature. *In re Sharp*, 15 Idaho 120, 96 P. 563, 18 L.R.A. (n.s.) 886 (1908).

Strangers to the record in a probate court are not entitled to appeal to a district court from a decree in the probate court; and to be entitled to appeal, they must present their claims and assert their objections in the first instance in the probate court, and then appeal from the ruling thereon. *Shaw v. McDougall*, 56 Idaho 697, 58 P.2d 463 (1936).

§ 22. Jurisdiction of justices of the peace. [Repealed.]

Compiler's notes. As originally adopted this section provided as follows:

"§ 22. In each county of this state there shall be elected justices of the peace as prescribed by law. Justices of the peace shall have such jurisdiction as may be conferred by law, but they shall not have jurisdiction of any cause wherein the value of the property or the amount in controversy exceeds the sum of three hundred dollars, exclusive of interest, nor where the boundaries or title to any real property shall be called in question."

It was amended as proposed by S.L. 1955, p. 670, S.R.J. No. 5 and ratified at the general election in November, 1956 to read as follows:

"§ 22. In each county of this state justices of the peace shall be selected in the manner as prescribed by law. Justices of the peace shall have such jurisdiction in civil and criminal cases as may be conferred by law, but they shall not have jurisdiction of any cause where the boundaries or title to any real property shall be an issue."

The repeal of this section was proposed by

S.L. 1961, p. 1077, H.J.R. No. 10 and such repeal was ratified at the general election November 6, 1962.

ANALYSIS

Application to other sections.

Civil jurisdiction.

Constitutionality of amendment.

Criminal jurisdiction.

Title to real estate.

Application to Other Sections.

The mention of civil and criminal cases in the definition of the jurisdiction of justices of the peace in this section as amended is not to be construed as a denial of other jurisdiction not mentioned. *Penrod v. Crowley*, 82 Idaho 511, 356 P.2d 73 (1960).

Section 31-2805 giving justices of the peace duty and authority to act as coroner is in no way repugnant to this section of the constitution, either before or after its amendment. *Penrod v. Crowley*, 82 Idaho 511, 356 P.2d 73 (1960).

Civil Jurisdiction.

This section did not extend jurisdiction of justices to actions involving \$300 exclusive of interest, in the face of § 1-1403 (repealed), which fixed the jurisdiction at \$300 inclusive of interest, but merely prohibited legislature from fixing the sum in excess of \$300 exclusive of interest. *Quayle v. Glenn*, 6 Idaho 549, 57 P. 308 (1899).

Where a plaintiff sued a nonresident in a justice court for \$200 and, in addition, 8 per cent interest for approximately eight years, thereby exceeding the jurisdictional amount of such court, and summons was personally served within the state, but within the county of such justice court, the constable's return reciting service on the defendant both individually and as trustee and president of a corporation, and the plaintiff thereafter filed an amended complaint attempting for the first time to allege a cause of action against the defendant both individually and as trustee and president of such corporation, and waiving all claim in excess of \$300.00 and compliance with an order of publication was insufficient, the proof of publication was void and no jurisdiction was thereby acquired. *Aker v. Silbaugh*, 62 Idaho 539, 113 P.2d 814 (1941).

Where a justice court did not have jurisdiction of the subject-matter of the action to recover a money judgment against a non resident defendant when original summons was personally served within the state, and when an order for publication of summons was made, the subsequent amendments to bring the subject-matter within the jurisdiction of the court without legal initial service of summons were unavailing as acquiring personal jurisdiction of the defendant. *Aker v.*

Silbaugh, 62 Idaho 539, 113 P.2d 814 (1941).

Constitutionality of Amendment.

Where proposed amendment to this section eliminated the words "called in question" and substituted the words "in issue" in referring to jurisdiction where boundaries or title to real property shall be in issue, it did not change the meaning of the section and was not sufficient to require a separate submission or to defeat amendment after its adoption. *Penrod v. Crowley*, 82 Idaho 511, 356 P.2d 73 (1960).

The amendment to this section providing that justices of the peace shall have such jurisdiction in civil and criminal cases as may be conferred by law is not a limitation upon jurisdiction conferred by this section prior to amendment; furthermore it does not oust the justice courts of previously existing administrative, inquisitorial and paternalistic jurisdiction. *Penrod v. Crowley*, 82 Idaho 511, 356 P.2d 73 (1960).

Amendment to this section was not invalidated by the fact that change in wording in amendment was omitted from question propounded to the voters when it was submitted for ratification, for change in wording was merely one of diction and its omission from the question didn't render the question antagonistic to or something other than the amendment proposed. *Penrod v. Crowley*, 82 Idaho 511, 356 P.2d 73 (1960).

Constitutional amendment providing for the selection of justices of the peace and the fixing of their jurisdiction by statute did not violate Const., Art. 20, § 2 since both proposals were germane to the common object and purpose of improving the administration of justice in those courts by securing more competent judges who should have broader jurisdiction. *Penrod v. Crowley*, 82 Idaho 511, 356 P.2d 73 (1960).

Criminal Jurisdiction.

Under § 9 of the organic act which provided, among other things, that justices of the peace should not have jurisdiction when the debt or sum claimed exceeds \$100, it was held that legislature could not confer upon justices of the peace jurisdiction over offenses punishable by fine not exceeding \$500. *People v. Maxon*, 1 Idaho 330 (1870).

This and the preceding section taken in connection with Const., Art. 1, § 8, limit jurisdiction of probate and justices' courts in criminal matters. Legislature can not confer on such courts jurisdiction in felony cases. It was intended to limit their jurisdiction in misdemeanor cases to such misdemeanors as were triable in such courts and under the statutes as they existed prior to the adoption of the Constitution. *Fox v. Flynn*, 27 Idaho 580, 150 P. 44 (1915).

Title to Real Estate.

The phrases, "called in question" and "put in issue," evidently are intended to have the

same meaning and application, that is, that justices' courts have no jurisdiction in an action in which the title to real property must

necessarily be determined. *Hammer v. Garrett*, 15 Idaho 657, 99 P. 124 (1908).

§ 23. Qualifications of district judges. — No person shall be eligible to the office of district judge unless he be learned in the law, thirty (30) years of age, and a citizen of the United States, and shall have resided in the state or territory at least two (2) years next preceding his election, nor unless he shall have been at the time of his election, an elector in the judicial district for which he is elected.

Comp. provisions: *Mont.* Art. 7, § 9.

Utah. Art. 8, § 7.

Wyo. Art. 5, § 12.

Cited in: *Shepherd v. Grimmett*, 3 Idaho 403, 31 P. 793 (1892); *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908); *Knight v. Trigg*, 16 Idaho 256, 100 P. 1060 (1909).

office of district judge to those persons who are qualified for the office. *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1581.

Qualifications.

This provision limits the candidates for the

§ 24. Judicial districts enumerated. — Until otherwise provided by law, the judicial districts shall be five (5) in number, and constituted of the following counties, viz:

First District — Shoshone and Kootenai.

Second District — Latah, Nez Perce, and Idaho.

Third District — Washington, Ada, Boise, and Owyhee.

Fourth District — Cassia, Elmore, Logan, and Alturas.

Fifth District — Bear Lake, Bingham, Oneida, Lemhi, and Custer.

Compiler's notes. An amendment to this section, proposed S.L. 1907, p. 592, H.J.R. 3, and voted upon Nov. 3, 1908, S.L. 1913, p. 668, by which each county was to be a judicial district, was declared not to be part of the Constitution, on account of noncompliance with the requirements for amending. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909).

Cross ref. The present districts are defined in §§ 1-801 — 1-809.

Comp. provisions: *Wyo.* Art. 5, §§ 19, 20.

Cited in: *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909); *Knight v. Trigg*, 16 Idaho 256, 100 P. 1060 (1909).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1581.

§ 25. Defects in laws to be reported by judges. — The judges of the district courts shall, on or before the first day of July in each year, report in writing to the justices of the Supreme Court, such defects or omissions in the laws as their knowledge and experience may suggest, and the justices of the Supreme Court shall, on or before the first day of December of each year, report in writing to the governor, to be by him transmitted to the legislature, together with his message, such defects and omissions in the Constitution and laws as they may find to exist.

Cited in: *R.E.W. Constr. Co. v. District Court*, 88 Idaho 426, 400 P.2d 390 (1965).

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1582.

§ 26. Court procedure to be general and uniform. — All laws relating to courts shall be general and of uniform operation throughout the state, and the organized judicial powers, proceedings, and practices of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments, and decrees of such courts, severally, shall be uniform.

Cited in: R.E.W. Constr. Co. v. District Court, 88 Idaho 426, 400 P.2d 390 (1965).

ANALYSIS

Charging fees and costs against county.

Delegation of judicial power.

Instructions to jury.

Process.

Selection of jury.

Charging Fees and Costs Against County.

Session Laws 1903, § 35, which required costs and attorneys' fees in a suit to adjudicate private rights of persons in and to the use of waters appropriated under the laws of the state to be paid by the county, was repugnant to this section. *Bear Lake County v. Budge*, 9 Idaho 703, 75 P. 614, 108 Am. St. R. 179 (1904).

Delegation of Judicial Power.

Session Laws 1903, § 36, which provided that, during the pendency of an action to adjudicate right to waters of a stream, use of the water should be under control of water commissioner and that he could issue all needful rules for the distribution of the water to defendants, was repugnant to this section. *Bear Lake County v. Budge*, 9 Idaho 703, 75 P. 614, 108 Am. St. R. 179 (1904).

Session Laws 1903, p. 223, which provided for appropriation, diversion, and adjudication of the rights to use of the waters of the state, and which contained certain peculiar provisions as to the duties of state engineer, apportionment of costs, preparation and use of maps as evidence, etc., in proceedings for the adjudication of water rights, was not, in this respect, repugnant to this section. *Boise City*

Irrigation & Land Co. v. Stewart, 10 Idaho 38, 77 P. 25, 77 P. 321 (1904).

Instructions to Jury.

The requirement of Rule 51(b) of the Idaho Rules of Civil Procedure that the trial court read the instructions to the jury before final arguments of the parties was essential to uniformity in court proceedings; therefore, trial court erred in instructing the jury after closing arguments without first obtaining the express waiver by counsel. *McDrummond v. Montgomery Elevator Co.*, 97 Idaho 679, 551 P.2d 966 (1976).

Process.

Session Laws 1903, § 34, p. 223, relative to distribution of water and adjudication of water rights, which authorized a suit for adjudication of water rights to be brought against "all claimants of a right to the use of the water" of the stream in question, without naming defendants, or requiring any effort for personal service on such defendants as might be found, was repugnant to this section. *Bear Lake County v. Budge*, 9 Idaho 703, 75 P. 614, 108 Am. St. R. 179 (1904).

Selection of Jury.

This section of the Constitution provides for uniformity in operation of laws throughout the state and where the method of selection of a criminal jury was at variance from the statutory requirement, error resulted therefrom. *State v. Carringer*, 84 Idaho 32, 367 P.2d 584 (1961).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1582.

§ 27. Change in compensation of officers. — The legislature may by law diminish or increase the compensation of any or all of the following officers, to wit: governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general, superintendent of public instruction, justices of the Supreme Court, judges of the court of appeals and district courts and magistrate judges; but no diminution or increase shall affect the compensation of the officer then in office during his term, provided, however, that the legislature may provide for the payment of actual and necessary expenses of these officers incurred while in performance of official duty.

Compiler's notes. As originally adopted this section provided as follows:

“§ 27. Change in compensation of officers. — The legislature may by law diminish or increase the compensation of any or all of the following officers, to wit: governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, superintendent of public instruction, commissioner of immigration and labor, justices of the Supreme Court, and judges of the district courts and district attorneys; but no diminution or increase shall affect the compensation of the officer then in office during his term, provided, however, that the legislature may provide for the payment of actual and necessary expenses of the governor, secretary of state, attorney general, and superintendent of public instruction incurred while in performance of official duty.”

This section was amended, as proposed by S.L. 1994, p. 1493, S.J.R. No. 109, § 7, and ratified at the general election November 8, 1994, to read as follows:

“The legislature may by law diminish or increase the compensation of any or all of the following officers, to wit: governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general, superintendent of public instruction, commissioner of immigration and labor, justices of the Supreme Court, and judges of the district courts and district attorney; but no diminution or increase shall affect the compensation of the officer then in office during his term, provided, however, that the legislature may provide for the payment of actual and necessary expenses of these officers incurred while in performance of official duty.”

This section was amended by S.J.R. No. 101, (S.L. 1997, p. 1300) and ratified at the general election November 3, 1998, to read as it now appears.

Cited in: Woods v. Bragaw, 13 Idaho 607, 92 P. 576 (1907); Peck v. State, 63 Idaho 375,

120 P.2d 820 (1941); Walker v. Wedgwood, 64 Idaho 285, 130 P.2d 856 (1942).

ANALYSIS

Disqualification of affected judge.
Effective date of increases.
Income tax inapplicable to state officers.
Mandamus.

Disqualification of Affected Judge.

Supreme Court justices were not disqualified to determine whether they were entitled to increased salaries before expiration existing terms of office. Higer v. Hansen, 67 Idaho 45, 170 P.2d 411 (1946).

Effective Date of Increases.

It was not intended, by either the constitution or the legislature, that there should be a restraint against the payment of increase of salaries of judicial officers immediately upon the effective date of the statute providing for same. Higer v. Hansen, 67 Idaho 45, 170 P.2d 411 (1946).

Income Tax Inapplicable to State Officers.

Where the state income tax act was copied largely from the federal act but omitted certain provisions found in the federal act for taxing government employees, the legislative intent was thus made to appear that there was no purpose to tax the salaries of state officers. Girard v. Defenbach, 61 Idaho 702, 106 P.2d 1010 (1940).

Mandamus.

Mandamus was the proper remedy where state officers refused to issue warrants for increase in salaries due judicial officers. Higer v. Hansen, 67 Idaho 45, 170 P.2d 411 (1946).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1584.

§ 28. Removal of judicial officers. — Provisions for the retirement, discipline and removal from office of justices and judges shall be as provided by law.

Compiler's notes. This section was adopted as proposed by H.J.R. No. 5 (S.L. 1967, p. 1576) and ratified at the general election on November 5, 1968, to read as it now appears.

ANALYSIS

Implied repeal of statute.
Procedure.
Removal.
—Justified.

Implied Repeal of Statute.

The provisions of § 19-4115, which was originally enacted in 1887, R.S. § 7459, to the extent that they did apply to district judges, were impliedly repealed by the adoption of this section, and the enactment of chapter 21, title 1, of the Idaho Code. Pittam v. Maynard, 103 Idaho 177, 646 P.2d 419 (1982).

Procedure.

While the judicial council fills an important role in the process for considering the discipline, removal, or retirement of judges, the

Idaho Supreme Court has the ultimate authority and responsibility to decide what should be done in each case based on a weighing of the evidence presented to the judicial council and any additional evidence the court permits. *Idaho Judicial Council v. Becker*, 122 Idaho 288, 834 P.2d 290 (1992).

Removal.

—Justified.

After an independent review of the evi-

dence presented to the judicial council, the Idaho Supreme Court found clear and convincing proof that judge's habitual intemperance, abuse of alcohol, and driving under the influence detracted from public confidence in the integrity of the judiciary. *Idaho Judicial Council v. Becker*, 122 Idaho 288, 834 P.2d 290 (1992).

Article VI

SUFFRAGE AND ELECTIONS

SECTION.

1. Secret ballot guaranteed.
2. Qualifications of electors.
3. Disqualification of certain persons.
4. Legislature may prescribe additional qualifications.

SECTION.

5. Residence for voting purposes not lost or gained.
6. Recall of officers authorized.
7. Nonpartisan selection of Supreme and district judges.

§ 1. Secret ballot guaranteed. — All elections by the people must be by ballot. An absolutely secret ballot is hereby guaranteed, and it shall be the duty of the legislature to enact such laws as shall carry this section into effect.

Comp. provisions: Mont. Art. 4, § 1.

Wash. Art. 6, § 6.

Cited in: *Ferbrache v. Drainage Dist. No. 5*, 23 Idaho 85, 128 P. 553, 44 L.R.A. (n.s.) 538, 1915C Ann. Cas. 43 (1912).

ANALYSIS

Annexation elections.

Illegal numbering of ballots.

Irrigation district election.

Annexation Elections.

Constitutional provisions concerning elections have no application to annexation proceedings brought by a municipality. *Willows v. Lewiston*, 93 Idaho 337, 461 P.2d 120 (1969).

Illegal Numbering of Ballots.

Where auditor of a county furnished ballots to election officers of the several precincts of his county, and ballots so furnished had been numbered consecutively from 1 to 15,000, and the number contained on each ballot corresponded with the number on the stub to that ballot, and the error, mistake, or wrongful act in numbering ballots was not known to electors, and the same was done without their knowledge or consent, and no opportunity was presented to electors for having the error corrected, and election was held by using such ballots in the several precincts of the county, the election will not be held void, either upon the ground that the numbering was an inva-

sion of the constitutional secrecy of the ballot guaranteed to the people, or upon the ground that the ballots contained distinguishing marks. *McGrane v. Nez Perce County*, 18 Idaho 714, 112 P. 312, 1912A Ann. Cas. 165, 32 L.R.A. (n.s.) 730 (1910).

Irrigation District Election.

This section, which provides for a secret ballot, is applicable to elections held in an irrigation district, under the laws of the state. Act providing that each voter may vote and have his ballot marked according to acreage of land owned by him and according to the number of inches of water used by him within the district violates provisions of the Constitution. *Pioneer Irrigation Dist. v. Walker*, 20 Idaho 605, 119 P. 304 (1911).

Opinions of Attorney General. As written, the proposed One Percent Initiative would require a super-majority of two-thirds of the qualified electors in any given district considering a "special tax"; this voting standard for imposing special taxes in excess of the one percent cap will be impossible to implement because there is no means to determine the number of qualified electors in an area. OAG 91-9.

Collateral References. Discussion of this article in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, pp. 201, 903; Vol. II, pp. 1054, 1149.

Discussion of this section in constitutional

convention. Constitutional Convention Proceedings, Vol. I, p. 904; Vol. II, pp. 1023, 1027, 1149.

§ 2. Qualifications of electors. — Every male or female citizen of the United States, eighteen years old, who has resided in this state and in the county where he or she offers to vote for the period of time provided by law, if registered as provided by law, is a qualified elector.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 2. Except as in this article otherwise provided, every male citizen of the United States, twenty-one years old, who has actually resided in the state, or territory, for six months, and in the county where he offers to vote, thirty days, next preceding the day of election, if registered as provided by law, is a qualified elector; and until otherwise provided by the legislature, women who have the qualifications prescribed in this article, may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho territory."

This section was amended, as proposed by S.L. 1895, p. 232, S.J.R. No. 2 and ratified at the general elections in November, 1896, to read as follows:

"§ 2. Except as in this article otherwise provided, every male or female citizen of the United States, twenty-one years old, who has actually resided in this state or territory for six months, and in the county where he or she offers to vote, thirty days next preceding the day of election, if registered as provided by law is a qualified elector; and until otherwise provided by the legislature, women who have the qualifications prescribed in this article may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho territory."

An amendment to this section which was proposed by S.J.R. No. 3 (Laws 1959, p. 657) was defeated at the general election in 1960.

This section was amended, as proposed by S.L. 1961, p. 1076, S.J.R. No. 6, and ratified at the general election November 6, 1962, to read as follows:

"§ 2. Qualifications of electors. — Except as in this article otherwise provided, every male or female citizen of the United States, twenty-one (21) years old, who has actually resided in this state or territory for six (6) months, and in the county where he or she offers to vote, thirty (30) days next preceding the day of election, if registered as provided by law, is a qualified elector; provided however, that every citizen of the United States, twenty-one (21) years old, who has actually resided in this state for sixty (60) days next preceding the day of election, if registered as required by law, is a qualified

elector for the sole purpose of voting for presidential electors; and until otherwise provided by the legislature, women who have the qualifications prescribed in this article may continue to hold such school offices and vote at such school elections as provided by the laws of Idaho territory."

S.L. 1971, p. 1411, H.J.R. No. 1 which proposed an amendment to this section was repealed and recalled by S.L. 1972, p. 1254, H.J.R. No. 80.

This section was further amended as proposed by S.L. 1982, p. 932, H.J.R. No. 14 and ratified at the general election November 2, 1982 to read as it now appears.

Cross ref. Qualifications of electors, §§ 34-401 — 34-407.

Comp. provisions: Mont. Art. 4, § 2.

Utah. Art. 4, § 2.

Wash. Art. 6, §§ 1, 1A.

Wyo. Art. 6, § 2.

Sec. to sec. ref. This section is referred to in § 50-412.

Cited in: Powell v. Spackman, 7 Idaho 692, 65 P. 503, 54 L.R.A. 378 (1901); Kerley v. Wetherell, 61 Idaho 31, 96 P.2d 503 (1939); Clemens v. Pinehurst Water Dist., 81 Idaho 213, 339 P.2d 665 (1959); Board of Trustees v. Board of County Comm'rs, 82 Idaho 183, 350 P.2d 743 (1960); Jordan v. Pearce, 91 Idaho 687, 429 P.2d 419 (1967); State v. Bronson, 94 Idaho 306, 486 P.2d 1019 (1971).

ANALYSIS

Bond elections.

Disqualifications.

Qualification of voters.

Registration.

— Irregularities.

Women voters.

Bond Elections.

This section only prescribes the qualifications of a voter at a general election, and is not infringed by a provision of municipal charter imposing property qualification on right to vote on question of incurring a municipal indebtedness. Wiggin v. City of Lewiston, 8 Idaho 527, 69 P. 286 (1902).

Bond election was not invalid, even though some of the voters voted in county in which they were not resident contrary to this section since constitutional provision is directory only

after the election has been held. *Lewis v. Woodall*, 72 Idaho 16, 236 P.2d 91 (1951).

Disqualifications.

No disqualification to hold office on account of sex, which may exist under this section, can be raised in a proceeding instituted after the wrongful removal of officer, to compel her to deliver the papers of the office to her alleged successor. *Kendrick v. Nelson*, 13 Idaho 244, 89 P. 755, 12 Ann. Cas. 993 (1907).

Qualification of Voters.

Legislature could not authorize persons to vote who have ceased to be citizens of the county and state, even though they be registered. *Knight v. Trigg*, 16 Idaho 256, 100 P. 1060 (1909).

Act prescribing residence within the state as sufficient to qualify a voter at an election within a district is in violation of this section of the Constitution. *Pioneer Irrigation Dist. v. Walker*, 20 Idaho 605, 119 P. 304 (1911).

The act of 1917, ch. 47, p. 106, declared in conflict with provisions of this section and Const., Art. VI, §§ 3 and 4 following, in that it purported to qualify as electors those who belonged to classes prohibited and disqualified by the Constitution. *Griffith v. Owens*, 30 Idaho 647, 166 P. 922 (1917).

This section as originally adopted defined electors and limited the franchise to males and, by the amendment of 1896, the right was extended to females, but the framers were not content to let their definitions stand but deemed it advisable to confer upon the legislature the power to prescribe additional qualifications so that the government must rest upon and be administered by those who have the right to vote. *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938).

The definition of electors in this section is modified by the two succeeding sections and especially Const., Art. VI, § 4 which authorizes the legislature to prescribe additional qualifications for the exercise of the right of suffrage. *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938).

The qualification required of a county commissioner as being "an elector of the district he represents" was intended by the legislature to apply to the possession of this qualification at the time of the general, not the primary, election. *Strecker v. Smith*, 66 Idaho 593, 164 P.2d 192 (1945).

Registration.

Registration is not a substantive qualification of an elector in this state. Registration is intended only as a regulation of the exercise of the right of suffrage and not as a qualification for such right. Terms "elector" and "qualified elector" are used interchangeably, and an elector is a qualified elector. *Wilson v. Bartlett*, 7 Idaho 271, 62 P. 416 (1900).

This section commits subject of registration of voters entirely to legislature, within constitutional limitations. *Gillesby v. Board of Comm'rs*, 17 Idaho 586, 107 P. 71 (1910).

There is no constitutional requirement that registration must be had for elections in special municipal corporations created by legislative enactment, such as irrigation districts, drainage districts, and good roads districts, and such registration is entirely left to the legislature. *Shoshone Hwy. Dist. v. Anderson*, 22 Idaho 109, 125 P. 219 (1912).

By this section matter of qualification of electors was committed to legislature. *Jaycox v. Varnum*, 39 Idaho 78, 226 P. 285 (1924).

—Irregularities.

Strict literal compliance with registration law will not be required in absence of fraud or intentional wrongdoing. *Huffaker v. Edgington*, 30 Idaho 179, 163 P. 793 (1917).

No one who is not "registered as provided by law," is a "qualified elector" under this section. *Dredge Mining Control — Yes!, Inc. v. Cenarrusa*, 92 Idaho 480, 445 P.2d 655 (1968).

Women Voters.

Suffrage amendment, guaranteeing to female citizens right to vote, neither relates to nor directly affects qualifications or competency of persons for jury duty, and, under such section, woman has no legal right to serve on jury. *State v. Kelley*, 39 Idaho 668, 229 P. 659 (1924).

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, p. 904; Vol. II, pp. 1028, 1150.

Residence or domicile of student or teacher for purpose of voting. 98 A.L.R.2d 488; 44 A.L.R.3d 797.

Residence of students for voting purposes. 44 A.L.R.3d 797.

§ 3. Disqualification of certain persons. — No person is permitted to vote, serve as a juror, or hold any civil office who has, at any place, been convicted of a felony, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 3. No person is permitted to vote, serve as a juror or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling, or offering to barter or sell his vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense, or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States, forbidding any such crime; or who, in any manner, teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of, or contributes to the support, aid or encouragement of, any order, organization, association, corporation, or society which teaches, advises, counsels, encourages, or aids any person to enter into bigamy, polygamy or such patriarchal or plural marriage, or which teaches or advises that the laws of this state prescribing rules of civil conduct, are not the supreme law of the state; nor shall Chinese, or persons of Mongolian descent, not born in the United States, nor Indians not taxed, who have not severed their tribal relations, and adopted the habits of civilization, either vote, serve as jurors, or hold any civil office."

This section was amended, as proposed by S.L. 1949, p. 597, H.J.R. No. 2 and ratified at the general election in November, 1950, to read as follows:

"§ 3. No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling, or offering to barter or sell his vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense, or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States, forbidding any such crime; or who, in any manner, teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of, or contributes to the support, aid, or encouragement of, any order, organi-

zation, association, corporation, or society, which teaches, advises, counsels, encourages, or aids any person to enter into bigamy, polygamy or such patriarchal or plural marriage, or which teaches or advises that the laws of this state prescribing rules of civil conduct, are not the supreme law of the state; nor shall Chinese, or persons of Mongolian descent, not born in the United States, either vote, serve as jurors, or hold any civil office."

This section was amended by S.L. 1961, p. 1073, S.J.R. No. 1 and ratified at the general election November 6, 1962 to read as follows:

"§ 3. Disqualification of certain persons. — No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, idiotic or insane, or who has, at any place, been convicted of treason, felony, embezzlement of the public funds, bartering or selling, or offering to barter or sell his vote, or purchasing or offering to purchase the vote of another, or other infamous crime, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense, or who is a bigamist or polygamist, or is living in what is known as patriarchal, plural or celestial marriage, or in violation of any law of this state, or of the United States, forbidding any such crime; or who, in any manner, teaches, advises, counsels, aids, or encourages any person to enter into bigamy, polygamy, or such patriarchal, plural, or celestial marriage, or to live in violation of any such law, or to commit any such crime; or who is a member of, or contributes to the support, aid, or encouragement of, any order, organization, association, corporation, or society, which teaches, advises, counsels, encourages, or aids any person to enter into bigamy, polygamy or such patriarchal or plural marriage, or which teaches or advises that the laws of this state prescribing rules of civil conduct, are not the supreme law of the state."

It was amended as proposed by S.L. 1981, p. 777, H.J.R. No. 7 and ratified at the general election November 2, 1982 to read as follows:

"§ 3. Disqualification of certain persons. — No person is permitted to vote, serve as a juror, or hold any civil office who is under guardianship, or who has, at any place, been convicted of a felony, and who has not been restored to the rights of citizenship, or who, at the time of such election, is confined in prison on conviction of a criminal offense."

This section was amended by S.J.R. No. 105 (S.L. 1998, p. 1361) and ratified at the general election November 3, 1998, to read as it now appears.

Cross ref. Disqualifications, §§ 34-402 — 34-407.

Comp. provisions: Wash. Art. 6, § 3.
Wyo. Art. 6, § 6.

Sec. to sec. ref. This section is referred to in § 50-412.

Cited in: *Powell v. Spackman*, 7 Idaho 692, 65 P. 503, 54 L.R.A. 378 (1901); *Adams v. Lansdon*, 18 Idaho 483, 110 P. 280 (1910); *Griffith v. Owens*, 30 Idaho 647, 166 P. 922 (1917); *Schwartzmiller v. Winters*, 99 Idaho 18, 576 P.2d 1052 (1978).

ANALYSIS

Construction and effect.
Felon convictions.
Requirement of test oath.
Selling liquor to Indians.

Construction and Effect.

This section was moderated by the framers of the constitution in adopting § 4 which authorizes the legislature to prescribe additional qualifications for the exercise of the right of suffrage. *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938).

Felon Convictions.

The restrictions of Rules of Evidence, Rule 609, Criminal Rules, Rules 32(b)(2) and 46(a)(7) and § 19-2514 on convicted felons do not overcome the broad effect of subsection (2)

of § 18-310 restoring the rights of convicted felons upon final discharge, and the attendant provisions of this section, giving a discharged felon the right to vote and subsection (2)(d) of § 2-209 giving discharged felons the right to serve on a jury. *United States v. Gomez*, 911 F.2d 219 (9th Cir. 1990).

Requirement of Test Oath.

This section was not violated by act of February 25, 1891, prescribing a test oath containing conditions of suffrage additional to those prescribed by this section. *Shepherd v. Grimmer*, 3 Idaho 403, 31 P. 793 (1892).

Selling Liquor to Indians.

Former law that prohibited the sale of intoxicating liquor to Indians was not unconstitutional even though Indians have now received rights of citizenship. *State v. Rorvick*, 76 Idaho 58, 277 P.2d 566 (1954).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 914; Vol. II, pp. 1028, 1150.

Voting rights of persons mentally incapacitated. 80 A.L.R.3d 1116.

§ 4. Legislature may prescribe additional qualifications. — The legislature may prescribe qualifications, limitations, and conditions for the right of suffrage, additional to those prescribe in this article, but shall never annul any of the provisions in this article contained.

Cited in: *Powell v. Spackman*, 7 Idaho 692, 65 P. 503, 54 L.R.A. 378 (1901); *Toncray v. Budge*, 14 Idaho 621, 95 P. 26 (1908); *Pioneer Irrigation Dist. v. Walker*, 20 Idaho 605, 119 P. 304 (1911); *Ferbrache v. Drainage Dist. No. 5*, 23 Idaho 85, 128 P. 553, 44 L.R.A. (n.s.) 538, 1915C Ann. Cas. 43 (1912); *Griffith v. Owens*, 30 Idaho 647, 166 P. 922 (1917); *American Indep. Party in Idaho, Inc. v. Cenarrusa*, 92 Idaho 356, 442 P.2d 766 (1968); *Rudeen v. Cenarrusa*, 136 Idaho 560, 38 P.3d 598 (2001).

ANALYSIS

First and second choice.
Legislative power in general.
Nonpartisan nomination of judicial candidates.
Primary elections.
Property qualifications.
Registration.
Requirement of test oath.

First and Second Choice.

Under our Constitution legislature has the right to prescribe "limitations and conditions" under which the right of suffrage may be exercised, and it was within legislative discretion and power to say to every citizen that he shall under certain circumstances, if he votes

at all, indicate both a first and a second choice for an officer. *Adams v. Lansdon*, 18 Idaho 483, 110 P. 280 (1910).

Legislative Power in General.

Legislature has been invested with broad powers and wide discretion in matter of legislating in regard to exercise of right of suffrage. *State ex rel. Mitchell v. Dunbar*, 39 Idaho 691, 230 P. 33 (1924).

Nonpartisan Nomination of Judicial Candidates.

An act providing for the nonpartisan nomination of candidates for the offices of justices of the Supreme Court and district judges, notwithstanding statutes providing for nomination and certification of judicial candidates nominated at conventions, is not invalid as an infringement and an impairment of the right of suffrage. *Koelsch v. Girard*, 54 Idaho 452, 33 P.2d 816 (1934).

Primary Elections.

This section authorizes the passage of primary election law providing for nomination of nonpartisan candidates for judicial offices of higher courts. *Koelsch v. Girard*, 54 Idaho 452, 33 P.2d 816 (1934).

Property Qualifications.

This section is sufficiently broad to empower legislature to prescribe property qualifications on right to vote in elections to create an indebtedness. *Wiggin v. City of Lewiston*, 8 Idaho 527, 69 P. 286 (1902).

This section was intended to vest in the legislature the power to prescribe additional "qualifications, limitations and conditions" for the exercise of the right of suffrage. The power conferred by this section, however, is limited by Art. 1, § 20, prohibiting property qualifications except for electors in school elections and elections creating indebtedness. Decisions from other states furnished no assistance in construing this section. *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938).

§ 5. Residence for voting purposes not lost or gained. — For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this state, or of the United States, nor while engaged in the navigation of the waters of this state or of the United States, nor while a student of any institution of learning, nor while kept at any alms house or other asylum at the public expense.

Comp. provisions: Wash. Art. 6, § 4.

Wyo. Art. 6, § 7.

Cited in: *Swanson v. Employment Sec. Agency*, 81 Idaho 385, 342 P.2d 714 (1959).

Soldiers.

Under provisions of this section, inmates of soldiers' home can not acquire, by reason of their presence in such home, and while kept at public expense, right to vote in the county and precinct in which such institution is located. *Powell v. Spackman*, 7 Idaho 692, 65 P. 503, 54 L.R.A. 378 (1901), overruled, *Hawkins v. Winstead*, 65 Idaho 12, 138 P.2d 972 (1943).

This section does not prevent inmates of soldiers' home from acquiring a new "residence" for purpose of voting in the county and precinct in which such home is located. *Hawkins v. Winstead*, 65 Idaho 12, 138 P.2d 972 (1943).

A soldier in the United States army stationed at an air base within the state, but living off of the base by permission of his

Registration.

The legislature clearly has the power to make registration an essential element of the definition "qualified elector" entitled to sign a petition for an initiative measure. *Kerley v. Wetherell*, 61 Idaho 31, 96 P.2d 503 (1939).

Requirement of Test Oath.

This section authorizes legislature to prescribe a test oath as a condition of suffrage, embracing clauses additional to those contained in § 3 of this article. *Shepherd v. Grimmett*, 3 Idaho 403, 31 P. 793 (1892).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 930, 943; Vol. II, pp. 1030, 1150.

commanding officer, could establish a new "residence" in county and state for the purpose of maintaining a divorce suit, notwithstanding the constitutional provision that residence for voting purposes is not lost or gained by reason of presence or absence while employed in the service of the United States. To effect a change of domicile, there must be not only a removal but an intent, and the fact that a removal is accomplished because of performance of duty of one in the service of the United States is immaterial where the intent is established. *Hawkins v. Winstead*, 65 Idaho 12, 138 P.2d 972 (1943).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 1019; Vol. II, pp. 1054, 1150.

Residence or domicile of student or teacher for purpose of voting. 98 A.L.R.2d 488; 44 A.L.R.3d 797.

Residence of students for voting purposes. 44 A.L.R.3d 797.

§ 6. Recall of officers authorized. — Every public officer in the state of Idaho, excepting the judicial officers, is subject to recall by the legal voters of the state or of the electoral district from which he is elected. The legislature shall pass the necessary laws to carry this provision into effect.

Compiler's notes. This section did not appear in the Constitution as originally adopted; it was added, as proposed by S.L. 1911, p. 790, H.J.R. No. 19, and ratified at the general election in November, 1912.

Cross ref. County and state officers, §§ 34-1701 — 34-1715.

Sec. to sec. ref. This section is referred to in § 33-424.

§ 7. Nonpartisan selection of Supreme and district judges. — The selection of justices of the Supreme Court and district judges shall be nonpartisan. The legislature shall provide for their nomination and election, but candidates for the offices of justice of the Supreme Court and district judge shall not be nominated nor endorsed by any political party and their names shall not appear on any political party ticket, nor be accompanied on the ballot by any political party designation.

Compiler's notes. This section did not appear in the Constitution as originally adopted; it was added, as proposed by S.L. 1933, p. 469, S.J.R. No. 2, and ratified at the general election in November, 1934.

Cross ref. Nonpartisan nomination and election of Supreme Court justices and district judges, §§ 34-701 — 34-708, 34-906.

ANALYSIS

In general.

"Write-ins" not permitted.

In General.

This amendment to the Constitution was not a change or modification of any existing provision but an entirely new and added section dealing exclusively with judicial nomina-

tions and elections. It segregates certain judicial offices from partisan and political party nominations and directs the legislature to specifically and separately provide for the nomination and election of such officers. *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938).

"Write-ins" Not Permitted.

This section and § 4 of this article authorize the legislature to provide a method for nominating candidates and having their names printed on the ballot and to make it exclusive to that end to prohibit the leaving of blank spaces for the "writing-in" of names of persons not regularly placed in nomination. *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938).

Article VII

FINANCE AND REVENUE

SECTION.

1. Fiscal year.
2. Revenue to be provided by taxation.
3. Property to be defined and classified.
4. Public property exempt from taxation.
5. Taxes to be uniform — Exemptions.
6. Municipal corporations to impose their own taxes.
7. State taxes to be paid in full.
8. Corporate property must be taxed.
9. Maximum rate of taxation.
10. Making profit from public money prohibited.
11. Expenditure not to exceed appropriation.

SECTION.

12. State tax commission, members, terms, appointment, vacancies, duties, powers — County boards of equalization, duties.
13. Money — How drawn from treasury.
14. Money — How drawn from county treasuries.
15. Legislature to provide system of county finance.
16. Legislature to pass necessary laws.
17. Gasoline taxes and motor vehicle registration fees to be expended on highways.

§ 1. Fiscal year. — The fiscal year shall commence on the second Monday of January in each year, unless otherwise provided by law.

Cross ref. Counties, fiscal year, § 31-1601. School districts, § 33-701.

State, fiscal year, §§ 67-2201 — 67-2203.

Cited in: *Hanley v. Federal Mining & Smelting Co.*, 235 F. 769 (D. Idaho 1916); *Washington Water Power Co. v. Kootenai County*, 270 F. 369 (9th Cir. 1921); *State v. Doherty*, 3 Idaho 384, 29 P. 855 (1892); *Stein v. Morrison*, 9 Idaho 426, 75 P. 246 (1904); *State*

v. Jones, 9 Idaho 693, 75 P. 819 (1904); *Humbird Lumber Co. v. Thompson*, 11 Idaho 614, 83 P. 941 (1905); *Fenton v. Board of Comm'rs*, 20 Idaho 392, 119 P. 41 (1911); *Achenbach v. Kincaid*, 25 Idaho 768, 140 P. 529 (1914); *Cheney v. Minidoka County*, 26 Idaho 471, 144 P. 343 (1914); *Continental & Com. Trust & Sav. Bank v. Werner*, 36 Idaho 601, 215 P. 458 (1923); *Leney v. Twin Falls*

County, 40 Idaho 600, 236 P. 531 (1925); State Water Conservation Bd. v. Enking, 56 Idaho 722, 58 P.2d 779 (1936).

County Fiscal Year.

This section fixes beginning of fiscal year as second Monday of January unless otherwise provided by law. Legislature has fixed fiscal year for conduct of county business to begin on second Monday of April [now October 1] of each year. Laclede Hwy. Dist. v. Bonner

County, 33 Idaho 476, 196 P. 196 (1921). See § 31-1601.

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1638, 1858.

Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1638.

§ 2. Revenue to be provided by taxation. — The legislature shall provide such revenue as may be needful, by levying a tax by valuation, so that every person or corporation shall pay a tax in proportion to the value of his, her, or its property, except as in this article hereinafter otherwise provided. The legislature may also impose a license tax, both upon natural persons and upon corporations, other than municipal, doing business in this state; also a per capita tax: provided, the legislature may exempt a limited amount of improvements upon land from taxation.

Cited in: Eberle v. Nielson, 78 Idaho 572, 306 P.2d 1083 (1956); Boise Community Hotel, Inc. v. Board of Equalization, 87 Idaho 152, 391 P.2d 840 (1964); Crow v. Board of Equalization, 104 Idaho 681, 662 P.2d 1125 (1983); Greater Boise Auditorium Dist. v. Royal Inn, 106 Idaho 884, 684 P.2d 286 (1984).

ANALYSIS

Appeal or review of assessments.

Bank stock.

Carey Act lands.

Discrimination.

Excise tax.

Exemptions.

Foreign corporations.

Gasoline taxes.

Improvement assessments.

Income tax.

Increase in rate.

Legislative power in general.

License tax.

Motor vehicle licenses.

"Property" defined.

School districts.

Uniformity of taxation.

Valuation of improvements.

Appeal or Review of Assessments.

Statute authorizing the district court on appeal to "modify" county board of equalization's tax assessment is not invalid as conferring on the judiciary executive functions. McGoldrick Lumber Co. v. Benewah County, 54 Idaho 704, 35 P.2d 659 (1934).

Where certain property is assessed at a higher value than all other property and a standard in determining the value for assessment purposes is used which does not conform to the standard generally used, the taxpayer

is entitled to a reduction in conformance to the standard used in assessing other property. Farmer v. State Tax Comm'n, 80 Idaho 72, 325 P.2d 278 (1958).

The provision of § 63-102 which provides that real and personal property subject to assessment for tax purposes must be assessed at its full cash value, is subject to limitations that the values fixed for taxation purposes must be uniform. Where a percentage standard of actual cash value is used to determine the assessed value, such standard should be applied to all property assessed. Farmer v. State Tax Comm'n, 80 Idaho 72, 325 P.2d 278 (1958).

Bank Stock.

Statute taxing shares of stock of state banks does not violate this section. State ex rel. Bank of Eagle v. Leonardson, 51 Idaho 646, 9 P.2d 1028 (1932).

Carey Act Lands.

Acquisition of equitable title is line between taxability and nontaxability of lands of entryman under Carey Act. Leney v. Twin Falls County, 40 Idaho 600, 236 P. 531 (1925).

Discrimination.

Evidence did not establish that state board of equalization in valuing railroad property intentionally and systematically discriminated against such property. Oregon Short Line R.R. v. Ross, 52 F.2d 695 (D. Idaho 1931).

Legislative definition and classification of income as not "property" for taxation purposes is not arbitrary. Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

Excise Tax.

The employment security tax levied upon employers is an excise tax and not a license

tax. *Employment Sec. Agency v. Joint Class "A" Sch. Dist. No. 151*, 88 Idaho 384, 400 P.2d 377 (1965).

Exemptions.

The provision of Const., Art. VII, § 5 which expressly authorizes "such exemptions from taxation as from time to time shall seem necessary and just" does not mean that property may be wholly, but not partially, exempt; therefore, the partial exemption under § 63-105DD of owner-occupied residential improvements does not violate this section or Const., Art. VII, § 5. *Simmons v. Idaho State Tax Comm'n*, 111 Idaho 343, 723 P.2d 887 (1986).

Foreign Corporations.

The words "doing business in this state," employed by the Constitution, do not apply to foreign corporation doing only interstate business, but apply only to local and intrastate business as the same may be distinguished from interstate business. *Northern Pac. Ry. v. Gifford*, 25 Idaho 196, 136 P. 1131, appeal dismissed, 235 U.S. 711, 35 S. Ct. 198, 59 L. Ed. 436 (1914).

License or corporation tax imposed on foreign corporation engaged in both interstate and intrastate business must be so imposed upon the domestic or intrastate business and have such direct reference to that as not to impose burdens upon or impair right of corporation to continue to carry on its interstate business and do all things necessary to be done in conducting such business. *Northern Pac. Ry. v. Gifford*, 25 Idaho 196, 136 P. 1131, appeal dismissed, 235 U.S. 711, 35 S. Ct. 198, 59 L. Ed. 436 (1914).

State tax on shares of nonresident stockholders in foreign corporation having statutory agent in state contravenes the Federal Constitution. *Utah Mtg. Loan Corp. v. Gillis*, 49 Idaho 676, 290 P. 714 (1930).

Gasoline Taxes.

Though statute called gasoline tax a "license tax," it was not such a tax and therefore not limited by Constitution to persons and nonmunicipal corporations doing business in state. *Independent Sch. Dist. v. Pfost*, 51 Idaho 240, 4 P.2d 893 (1931).

Legislature is not limited to the methods of taxation enumerated in this section. Upholding state gasoline tax. *Independent Sch. Dist. v. Pfost*, 51 Idaho 240, 4 P.2d 893 (1931).

It is conceded herein by the state that a statute exacting license fee from dealers in gasoline could not be made to apply to a city without contravening this provision and § 4 of this article. *State ex rel. Pfost v. Boise City*, 57 Idaho 507, 66 P.2d 1016 (1937).

Improvement Assessments.

Special assessment for improvement is not tax within meaning of this section. *Booth v.*

Groves, 43 Idaho 703, 255 P. 638 (1927).

A developer's filing of a Declaration of Condominium for an apartment complex triggered a new classification of its property, a discrete classification which rendered adjusted assessment on the basis of the altered classification constitutionally valid. *Fairway Dev. Co. v. Bannock County*, 113 Idaho 933, 750 P.2d 954 (1988).

Income Tax.

The Constitution accords the legislature substantial discretion in matters of taxation and contains no provision specifically prohibiting a state income tax; Idaho has rejected the argument that because the income tax is not among the taxes specifically enumerated in this section, it is thereby prohibited. *Idaho State Tax Comm'n v. Payton*, 107 Idaho 258, 688 P.2d 1163 (1984).

Income taxation by the state is constitutional. *State v. Staples*, 112 Idaho 105, 730 P.2d 1025 (Ct. App. 1986).

Increase in Rate.

Increase of rate on merchandise, machinery, furniture, and fixtures within county by state tax commission from 23% to 29.9% was not justified where other classes of personal property within county was taxed at rate of 23%, since action of commission did not attain uniformity of taxation, but destroyed uniformity of taxation. *Chastain's, Inc. v. State Tax Comm'n*, 72 Idaho 344, 241 P.2d 167 (1952).

Legislative Power in General.

Provisions of this section which declare "that the legislature shall provide such revenue as may be needful by levying a tax by valuation," etc., applies to the raising of revenue for state purposes. *Fenton v. Board of Comm'rs*, 20 Idaho 392, 119 P. 41 (1911).

The methods of taxation prescribed by this section do not limit the power of the legislature nor prohibit it from raising revenue in any other manner. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932); *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

This article contains the only sections referring to the matter of taxation and does not provide who shall assess property for taxing purposes; the whole matter is left to the legislature. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

This section and section 5 of this article invests the legislature with full power to determine who shall assess property for taxing purposes. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

License Tax.

License tax authorized by this section is not restricted to the single purpose of raising

revenue. *State v. Union Cent. Life Ins. Co.*, 8 Idaho 240, 67 P. 647 (1902).

This provision of the Constitution limits power of legislature to impose a license tax on those persons and corporations that are "doing business." *Ex parte Gale*, 14 Idaho 761, 95 P. 679 (1908).

License and per capita taxes must be imposed under this provision. *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923).

License fee of five per cent of gross earnings of auto transportation companies imposed by S.L. 1925, ch. 197, § 5 (now repealed) is not invalid merely because above cost of regulation. *Smallwood v. Jeter*, 42 Idaho 169, 244 P. 149 (1926).

Income tax is an excise tax. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Statute levying a license or excise tax on producers of electricity is construed as not to include cities and therefore, as not violative of this section and § 4 of this article. *City of Idaho Falls v. Pfost*, 53 Idaho 247, 23 P.2d 245 (1933).

A license or excise tax is not a tax on property within the meaning of the provision requiring property to be taxed uniformly by value. *J.C. Penney Co. v. Diefendorf*, 54 Idaho 374, 32 P.2d 784 (1934); *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

Motor Vehicle Licenses.

Law providing for licenses on motor vehicles rated according to horsepower is not contrary to the provisions of this section. *In re Kessler*, 26 Idaho 764, 146 P. 113, 1917A Ann. Cas. 228, 1915D L.R.A. (n.s.) 322 (1915).

This provision refers to taxation in the ordinary sense and is inapplicable to motor registration licenses. *Garrett Transf. & Storage Co. v. Pfost*, 54 Idaho 576, 33 P.2d 743 (1933).

Statute licensing auto trailers does not violate this section by imposing added license on trailers used in connection with auto stages. Distinguishing tax from license. *Garrett Transf. & Storage Co. v. Pfost*, 54 Idaho 576, 33 P.2d 743 (1933).

The statute apportioning auto license revenue among the several counties does not conflict with this section by raising revenue by license and excise taxes. This section specifically authorizes such levies. *Ada County v. Wright*, 60 Idaho 394, 92 P.2d 134 (1939).

"Property" Defined.

The term "property" as used herein is in its commonly accepted significance. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Courts take judicial notice that income as such was never assessed or taxed as "property" in this state. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

School Districts.

A school district is not a municipal corporation within the meaning of this section. *Employment Sec. Agency v. Joint Class "A" Sch. Dist. No. 151*, 88 Idaho 384, 400 P.2d 377 (1965).

Uniformity of Taxation.

The ad valorem tax must be uniform on all property within the county. *Chastain's, Inc. v. State Tax Comm'n*, 72 Idaho 344, 241 P.2d 167 (1952).

Uniformity in taxation applies both to mode of assessment and rate of tax. *Chastain's, Inc. v. State Tax Comm'n*, 72 Idaho 344, 241 P.2d 167 (1952).

One class of property may not be assessed at a higher percentage of its cash value than others. *Idaho Tel. Co. v. Baird*, 91 Idaho 425, 423 P.2d 337 (1967).

The requirement of uniformity is violated not only when the tax is levied unevenly within the same class of subjects but also when one class of property is systematically assessed at a higher percentage of actual cash value, subjecting the taxpayer to a higher rate of taxation, than applies to other property within the taxing district. *County of Ada v. Red Steer Drive-Ins of Nev., Inc.*, 101 Idaho 94, 609 P.2d 161 (1980).

This section and art. VII, § 5 require that taxation must be proportional and uniform as among the same class of those to be taxed. *Fairway Dev. Co. v. Bannock County*, 113 Idaho 933, 750 P.2d 954 (1988).

Valuation of Improvements.

Where the formula adopted by the Board of Tax Appeals and affirmed by the District Court amounted to a 27 percent reduction in the valuation of improvements on commercial property, which reduction had already been discriminately applied to residential and farm properties, and which thereby reduced the valuation on the commercial property as would equalize it with the values placed on other properties, the district court was merely in keeping with the holdings of prior Idaho case law. *County of Ada v. Red Steer Drive-Ins of Nev., Inc.*, 101 Idaho 94, 609 P.2d 161 (1980).

Opinions of Attorney General. Personal property tax liens are entitled to first priority, even over antecedent encumbrances, including prior perfected purchase money security interests. OAG 85-1.

The 1993 amendment to § 63-202 cannot be interpreted to create a developers' discount, for to do so would violate this section and Const., Art. 7, § 5 and might also force other taxpayers to challenge their assessed valuations on the grounds that developers are systematically assessed at lower rates; a better interpretation is that the present State Tax Commission rules are in full compliance

with § 63-202 both before and after the 1993 amendment because these rules already require assessors to take into account a reasonable time allowed to consummate the sale of the property being assessed. OAG 94-1.

§ 3. Property to be defined and classified. — The word “property” as herein used shall be defined and classified by law.

Cross ref. Personal property defined, §§ 55-102, 63-109.

Property defined, § 73-114.

Real property defined, §§ 55-101, 63-108.

Cited in: Hanley v. Federal Mining & Smelting Co., 235 F. 769 (D. Idaho 1916); Cheney v. Minidoka County, 26 Idaho 471, 144 P. 343 (1914); Continental & Com. Trust & Sav. Bank v. Werner, 36 Idaho 601, 215 P. 458 (1923).

ANALYSIS

Foundation of classification.

Legislative delegation.

Legislative discretion.

Foundation of Classification.

Classification must be founded on differences either defined by Constitution or such as are natural or intrinsic and reasonable. Williams v. Baldridge, 48 Idaho 618, 284 P. 203 (1930).

The legislature cannot by classifying property as real, personal, and operating validate assessment of one type of property at a higher

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1639, 1645, 1691.

percentage of its cash value than others. Idaho Tel. Co. v. Baird, 91 Idaho 425, 423 P.2d 337 (1967).

Legislative Delegation.

The provisions of § 63-605 do not constitute an unauthorized delegation of legislative authority by empowering the state tax commission to classify property for taxation purposes. Abbot v. State Tax Comm'n, 88 Idaho 200, 398 P.2d 221 (1965).

Legislative Discretion.

Legislative power to classify and define property for purposes of taxation is not subject to judicial review. Diefendorf v. Gallet, 51 Idaho 619, 10 P.2d 307 (1932).

Opinions of Attorney General. Personal property tax liens are entitled to first priority, even over antecedent encumbrances, including prior perfected purchase money security interests. OAG 85-1.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1639.

§ 4. Public property exempt from taxation. — The property of the United States, except when taxation thereof is authorized by the United States, the state, counties, towns, cities, villages, school districts, and other municipal corporations and public libraries shall be exempt from taxation; provided, however, that unimproved real property owned or held by the department of fish and game may be subject to a fee in lieu of taxes if the fees are authorized by statute but not to exceed the property tax for the property at the time of acquisition by the department of fish and game, unless the tax for that class of property shall have been increased.

Compiler's notes. As originally adopted, this section provided as follows:

“§ 4. **Public property exempt from taxation.** — The property of the United States, the state, counties, towns, cities, and other municipal corporations and public libraries shall be exempt from taxation.”

This section was amended, as proposed by S. L. 1943, p. 383, S.J.R. No. 4, and ratified at the general election in November, 1944, to read as follows:

“The property of the United States, except when taxation thereof is authorized by the United States, the state, counties, towns, cit-

ies, villages, school districts, and other municipal corporations and public libraries, shall be exempt from taxation.”

This section was further amended, as proposed by S.L. 1990, p. 1214, H.J.R. No. 14, and ratified at the general election November 6, 1990, to read as it now appears.

Comp. provisions: Mont. Art. 8, § 5.

Utah. Art. 13, § 2.

Wyo. Art. 15, § 12.

Cited in: Achenbach v. Kincaid, 25 Idaho 768, 140 P. 529 (1914); Herbert v. Kester, 62 Idaho 670, 115 P.2d 417 (1941); State v. Burris, 101 Idaho 683, 619 P.2d 1136 (1980).

ANALYSIS

Cemetery property.
 Construction.
 County property.
 Federal property.
 Forest lands.
 Improvement assessments.
 Irrigation districts.
 Municipal property.
 Possessory interests.
 Public utilities' property.
 Reclamation acts.
 Solid waste disposal fee.
 State property.
 Title under foreclosure.
 Waiver of exemption.

Cemetery Property.

None of the property of the corporation involved, neither the lot sold for burial purposes nor the unplatted acreage, is exempt from the tax levied and assessed since such corporation was not a public cemetery within the intent and meaning of § 63-105 so as to entitle it to exemption from taxation. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

The purpose of exemptions of privately owned property from taxation undoubtedly is to promote the public welfare and the right of the legislature to exempt privately owned property is recognized if it is exercised to encourage private enterprise and thereby further the public welfare. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

Construction.

Statute levying a license or excise tax on producers of electricity is construed as not to include cities and, therefore, as not violative of this section and § 2 of this article. *City of Idaho Falls v. Pfost*, 53 Idaho 247, 23 P.2d 245 (1933).

Tax exemptions are strictly construed. *Lewiston Orchards Irrigation Dist. v. Gilmore*, 53 Idaho 377, 23 P.2d 720 (1933).

Constitutional convention had understood that this provision prevented the legislature from providing for or paying a tax upon public property. *Robb v. Nielson*, 71 Idaho 222, 229 P.2d 981 (1951).

County Property.

This section does not apply to levy of a special tax by county for purpose of exhibiting its products and industries at public exhibitions, as provided by § 31-823. *Bevis v. Wright*, 31 Idaho 676, 175 P. 815 (1918).

Federal Property.

The equity of purchasers of lots and blocks where the fee simple still remains in the United States can not be classified as personal property under § 63-109 and made sub-

ject to taxation. *United States v. Power County*, 21 F. Supp. 684 (D. Idaho 1937).

This section and § 19 of art. 21 exempts property of the United States from taxation. Applied to land acquired by the United States to replace town flooded by federal irrigation dam. *United States v. Power County*, 21 F. Supp. 684 (D. Idaho 1937).

The supremacy of the Federal government in our nation forbids the acknowledgment of the power of a state to tax property of the United States without its consent. Under an implied constitutional immunity, its property and operations must be exempt from state control in tax, as in other matters. *Tree Farmers, Inc. v. Goeckner*, 86 Idaho 290, 385 P.2d 649 (1963).

Forest Lands.

Charge levied against land under Forestry Law (§ 38-107), providing for state fire protection at actual cost and collection of amount due from lands protected, where owner fails to provide actual protection, did not constitute double taxation in violation of this section. *Chambers v. McCollum*, 47 Idaho 74, 272 P. 707 (1928).

Appellant had possession and an equitable and beneficial ownership in the logs sufficient for taxation where appellant was at all times operating under a valid contract with the government from the moment the logs were severed from the land, pursuant to which would lead to complete ownership and legal title in appellant, appellant being authorized to take trees from Forest Service Lands, transport them and upon compliance with the specific terms of the contract as to scaling and payment, receive full and complete legal title and the right to do with them as it saw fit. *Tree Farmers, Inc. v. Goeckner*, 86 Idaho 290, 385 P.2d 649 (1963).

Improvement Assessments.

An assessment is not a tax within the purview and meaning of this section but a charge in rem against the special tracts of land assessed for benefits. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Irrigation Districts.

Irrigation district is not a municipal corporation within the meaning of this section so as to exempt its property from taxation. *Lewiston Orchards Irrigation Dist. v. Gilmore*, 53 Idaho 377, 23 P.2d 720 (1933).

Municipal Property.

School districts and municipalities are not exempt from gasoline tax, despite constitutional provision against levying property tax on property of municipal corporations. *Independent Sch. Dist. v. Pfost*, 51 Idaho 240, 4 P.2d 893 (1931).

The statute levying a license tax on produc-

ers of electricity is construed as not intended to include cities and therefore does not violate this section. *City of Idaho Falls v. Pfost*, 53 Idaho 247, 23 P.2d 245 (1933).

Rule exempting cities from taxation applies only to property taxes and does not extend to excise or privilege taxes such as the state gasoline tax. *State ex rel. Pfost v. Boise City*, 57 Idaho 507, 66 P.2d 1016 (1937).

It was conceded herein by the state that a statute exacting a license fee from dealers in gasoline could not be made to apply to a city without contravening this article. (Sections 2 and 4) *State ex rel. Pfost v. Boise City*, 57 Idaho 507, 66 P.2d 1016 (1937).

Possessory Interests.

Where land in Idaho owned by the United States government in trust for certain Indian allottees was leased by the United States to plaintiff for 25 years with an option to renew for an additional 25 years, and plaintiff built a potato storage warehouse on the land with a useful life of 50 to 75 years with the ownership of the warehouse, by the terms of the lease, to be in the United States, but the use thereof to belong to plaintiff for the duration of the lease; plaintiff was not obliged to pay Idaho ad valorem taxes on the warehouse since it was owned by the United States, and therefore exempt from such taxation, and no Idaho statute provided for taxation of plaintiff's possessory interest in the premises. (In 1969 I. C. § 63-1223 was amended to provide for taxation of such possessory interests.) *Russet Potato Co. v. Board of Equalization*, 93 Idaho 501, 465 P.2d 625 (1970).

Public Utilities' Property.

Property owned by public utilities is not public property exempt from taxation. *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959).

Reclamation Acts.

Under the federal reclamation act, where a person has so far complied with provisions of said law as to residence and cultivation of land for more than five years, he can complete his title at any time by making final proof and paying deferred payments on his water right and fees provided by law to be paid. Under said act the government simply retains title as security for payment of the money owing on purchase-price of the water right for such land. The entryman's interest is, under such circumstances, subject to taxation. *Cheney v. Minidoka County*, 26 Idaho 471, 144 P. 343 (1914).

As long as something remains to be done to divest government of its beneficial interest in land, equitable title does not pass to entryman and land not subject to taxation. *Leney v. Twin Falls County*, 40 Idaho 600, 236 P. 531 (1925).

Solid Waste Disposal Fee.

A solid waste disposal "fee" for residential dwellings was reasonably related to the services rendered by the county in acquiring, establishing, maintaining and operating its solid waste disposal system. The fee was authorized by I.C. § 31-4404(2) and was not an illegal "tax" in violation of this section and Article 7, § 5 of the Idaho Constitution. *Kootenai County Property Ass'n v. Kootenai County*, 115 Idaho 676, 769 P.2d 553 (1989).

State Property.

Taxes on lands bought in by the state on a foreclosure sale and thereafter redeemed are not canceled. *State ex rel. Hoover v. Minidoka County*, 50 Idaho 419, 298 P. 366 (1931).

State can not be required to pay taxes as condition precedent to having title to lands quieted. *State ex rel. Hoover v. Minidoka County*, 50 Idaho 419, 298 P. 366 (1931).

State may, on behalf of its highway department, demand an excise tax on gasoline consumed in another department in carrying on its functions. Distinguishing levies on federal agencies. *Independent Sch. Dist. v. Pfost*, 51 Idaho 240, 4 P.2d 893 (1931).

Law that provided for payment of taxes on land held by fish and game department in lieu of tax assessment based on valuation of land at the time of acquisition by the department was unconstitutional, since it violated this section exempting public property from taxation. *Robb v. Nielson*, 71 Idaho 222, 229 P.2d 981 (1951).

Title Under Foreclosure.

Proceedings for the enforcement of a prior tax lien are without effect after state receives sheriff's deed on foreclosure, whether or not the property belonged to the state before expiration of period of redemption and was subject to be listed and assessed under exemption law. *State ex rel. Nash v. Reed*, 47 Idaho 131, 272 P. 1008 (1928).

Constitutional tax exemption extends to lands purchased by state in foreclosing school fund mortgage. *State ex rel. Hoover v. Minidoka County*, 50 Idaho 419, 298 P. 366 (1931).

When state receives sheriff's deed on foreclosure, all prior taxes against the property covered thereby become nil, but no such result occurs until the sheriff's deed actually issues. *State ex rel. Hoover v. Minidoka County*, 50 Idaho 419, 298 P. 366 (1931).

Waiver of Exemption.

Legislature cannot waive exemption by providing for voluntary payment of tax, since this is an attempt to do indirectly what it cannot do directly. *Robb v. Nielson*, 71 Idaho 222, 229 P.2d 981 (1951).

Opinions of Attorney General. Emergency Communications Act charges pursuant

to § 31-4804 were not intended to apply to the state. If applied to the state, the charges, which may be characterized on a tax in lieu of property tax, would likely be held to violate this section. OAG 89-4.

Although it was difficult to determine with certainty whether provisions of county highway district's ordinance allowing for discretionary application of impact fees outside of designated benefit zones, which required payment of fees without any apparent determi-

nation of need for services as a result of new development and lacked clarity on accounting for revenues, was a disguised tax in violation of Const., Art. 7, §§ 4 and 5, such provisions were indicative of a tax rather than a fee. OAG 93-5.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1639, 1652.

§ 5. Taxes to be uniform — Exemptions. — All taxes shall be uniform upon the same class of subjects within the territorial limits, of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal: provided, that the legislature may allow such exemptions from taxation from time to time as shall seem necessary and just, and all existing exemptions provided by the laws of the territory, shall continue until changed by the legislature of the state: provided further, that duplicate taxation of property for the same purpose during the same year, is hereby prohibited.

Cross ref. Tax exemptions, §§ 63-105 — 63-107.

Comp. provisions: Wash. Art. 7, § 1.

Wyo. Art. 15, §§ 11, 12.

Cited in: *Hanley v. Federal Mining & Smelting Co.*, 235 F. 769 (D. Idaho 1916); *Salisbury v. Lane*, 7 Idaho 370, 63 P. 383 (1900); *Humbird Lumber Co. v. Thompson*, 11 Idaho 614, 83 P. 941 (1905); *State v. Butterfield Live Stock Co.*, 17 Idaho 441, 106 P. 455, 26 L.R.A. (n.s.) 1224, 124 Am. St. R. 263 (1909); *Northern Pac. Ry. v. Gifford*, 25 Idaho 196, 136 P. 1131 (1913); *Achenbach v. Kincaid*, 25 Idaho 768, 140 P. 529 (1914); *Cheney v. Minidoka County*, 26 Idaho 471, 144 P. 343 (1914); *Weiser Nat'l Bank v. Washington County*, 30 Idaho 332, 164 P. 1014 (1917); *Continental & Com. Trust & Sav. Bank v. Werner*, 36 Idaho 601, 215 P. 458 (1923); *Stark v. McLaughlin*, 45 Idaho 112, 261 P. 244 (1927); *Batt v. Unemployment Comp. Div. of Indus. Accident Bd.*, 63 Idaho 572, 123 P.2d 1004 (1942); *Boise Community Hotel, Inc. v. Board of Equalization*, 87 Idaho 152, 391 P.2d 840 (1964); *Greater Boise Auditorium Dist. v. Royal Inn*, 106 Idaho 884, 684 P.2d 286 (1984); *State v. Barlow*, 113 Idaho 573, 746 P.2d 1032 (Ct. App. 1987); *Blangers v. State, Dep't of Revenue & Taxation*, 114 Idaho 944, 763 P.2d 1052 (1988).

ANALYSIS

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Ad Valorem Tax.

The ad valorem tax must be uniform on all property within the county. *Chastain's, Inc. v. State Tax Comm'n*, 72 Idaho 344, 241 P.2d 167 (1952).

Although different types of property are by their nature more amenable to valuation by one method of appraisal than another the touchstone in the appraisal of property for ad valorem tax purposes is the fair market value of that property, and fair market value must

result from application of the chosen appraisal method. *Merris v. Ada County*, 100 Idaho 59, 593 P.2d 394 (1979).

Where a county undertakes to update its initial declarations during the course of the tax year, it cannot increase a taxpayer's tax burden to reflect the taxpayer's acquisition of nonexempt property without decreasing that tax burden to reflect the fact that property reported by the taxpayer in an earlier declaration was no longer subject to the county's ad valorem tax. *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980).

The rule requiring uniformity in ad valorem taxation is not offended by reasonable classifications of property for purposes of applying different methods of valuation of disparate types of property. *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980).

Appeal or Review.

Statute authorizing the district court on appeal to "modify" county board of equalization's tax assessment is not invalid as conferring on the judiciary executive functions. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

Assessment.

Uniformity in taxing implies equality in burden of taxation, and this equality of burden can not exist without uniformity in mode of assessment as well as rate of taxation. *Washington Water Power Co. v. Kootenai County*, 270 F. 369 (9th Cir. 1921), modified on other grounds, 273 F. 524 (9th Cir. 1921).

Public utilities company whose property is assessed at higher rate of its cash value, when other property is assessed at a lower rate, is entitled to relief from such imposition. *Washington Water Power Co. v. Kootenai County*, 270 F. 369 (9th Cir. 1921), modified on other grounds, 273 F. 524 (9th Cir. 1921).

Requirement that all property be assessed at its actual cash value is secondary to constitutional mandate of equality of taxation. *Washington County v. First Nat'l Bank*, 35 Idaho 438, 206 P. 1054 (1922).

This action will be taken even though reduction of assessment will result in assessment at less than cash value. This is done not because court approves of such valuation, but because it is only practical method of enforcing constitutional rights. *Washington County v. First Nat'l Bank*, 35 Idaho 438, 206 P. 1054 (1922).

Where certain property is assessed at higher value than all other property, court will enforce requirement of uniformity by reduction of taxes on property at higher valuation, where there is intentional discrimination. *Washington County v. First Nat'l Bank*, 35 Idaho 438, 206 P. 1054 (1922).

Neither land nor crop of timber may be

assessed more than once during tax year. *Winton Lumber Co. v. Shoshone County*, 50 Idaho 130, 294 P. 529 (1931).

Refusal of state board of equalization to apportion to city for municipal taxation value of operating property of railroad located therein did not violate this section or §§ 8 and 12 of this article. *City of Pocatello v. Ross*, 51 Idaho 395, 6 P.2d 481 (1931).

This section and § 2 of this article invests the legislature with full power to determine who shall assess property for taxing purposes. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

A statute authorizing a school district to contract for reception of students from another district at a lesser rate of compensation than the actual average cost per capita for education in receiving district is not unconstitutional as imposing an ununiform tax. *Independent Sch. Dist. No. 6 v. Common Sch. Dist. No. 38*, 64 Idaho 303, 131 P.2d 786 (1942).

This section is not violated because another taxing unit within the state has a heavier or lighter tax rate than the complaining tax unit. *Independent Sch. Dist. No. 6 v. Common Sch. Dist. No. 38*, 64 Idaho 303, 131 P.2d 786 (1942).

Classification.

This provision, in effect, requires that if tax is to be levied by county, it shall be uniform upon same class of subjects within county. *Idaho County v. Fenn Hwy. Dist.*, 43 Idaho 233, 253 P. 377 (1926).

Classification for purposes of exemption must be founded on differences either defined by Constitution or such as are natural or extrinsic and reasonable. When not arbitrary and unreasonable, they will be sustained. *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

The portion of §§ 7 and 8 of the chain store tax law excluding gasoline stations from the tax is not an arbitrary and unreasonable classification in violation of this section. *J.C. Penney Co. v. Diefendorf*, 54 Idaho 374, 32 P.2d 784 (1934).

Discrimination through classification for the purposes of taxation violates the equality clause only where it is such as to preclude the assumption that it was made in the exercise of legislative judgment and discretion. *John Hancock Mut. Life Ins. Co. v. Haworth*, 68 Idaho 185, 191 P.2d 359 (1948).

The state has the power to classify for the purposes of taxation, only limited by the rule that the classification must be reasonable and founded upon differences between the parties. *John Hancock Mut. Life Ins. Co. v. Haworth*, 68 Idaho 185, 191 P.2d 359 (1948).

The legislature cannot by dividing property into classes designated as real, personal, and operating property render valid a higher as-

assessment valuation on operating property than on other property for ad valorem tax purposes. *Idaho Tel. Co. v. Baird*, 91 Idaho 425, 423 P.2d 337 (1967).

Construction in General.

This provision is concerned only with direct property tax. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

The Supreme Court would assume in favor of the constitutionality of a statute that the purpose of providing for a levy of a special tax in unorganized school districts was to provide revenue for the payment of tuition for children of school age residing in the districts, and where there were no children of school age within unorganized school districts and no outstanding claims, there could be no lawful tax, since there was no lawful purpose, and the people can not be taxed except for a lawful purpose. *Northern Pac. Ry. v. Shoshone County*, 63 Idaho 36, 116 P.2d 221 (1941); *Scandrett v. Shoshone County*, 63 Idaho 46, 116 P.2d 225 (1941).

Under this and the next succeeding section an act purporting to require the levy of a special tax in unorganized school districts, irrespective of the number of school children therein, and to provide for the turning of the money so raised over to the county at large to be placed in the county treasury to the credit of the school fund, is unconstitutional. *Northern Pac. Ry. v. Shoshone County*, 63 Idaho 36, 116 P.2d 221 (1941); *Scandrett v. Shoshone County*, 63 Idaho 46, 116 P.2d 225 (1941).

The taxes levied by the board of county commissioners for general school purposes must be uniform throughout the county, whereas taxes levied by an organized school district need only be uniform throughout the district making the levy, and the fact that several organized school districts of a county may each levy a special tax affords no reason for the legislature levying a special tax in the several unorganized school districts throughout the state, nor does it afford authority for the county commissioners levying a special tax on property within an unorganized district for the benefit of the whole county, without benefit to anybody or property within the tax territory. *Northern Pac. Ry. v. Shoshone County*, 63 Idaho 36, 116 P.2d 221 (1941); *Scandrett v. Shoshone County*, 63 Idaho 46, 116 P.2d 225 (1941).

The Supreme Court, in construing statutes, should assume that the legislature intended to enact a valid and constitutional law, and, for that reason, should give statutes as favorable interpretation as possible. *Northern Pac. Ry. v. Shoshone County*, 63 Idaho 36, 116 P.2d 221 (1941); *Scandrett v. Shoshone County*, 63 Idaho 46, 116 P.2d 225 (1941).

The requirement of uniformity is violated not only when the tax is levied unevenly

within the same class of subjects but also when one class of property is systematically assessed at a higher percentage of actual cash value, subjecting the taxpayer to a higher rate of taxation, then applies to other property within the taxing district. *County of Ada v. Red Steer Drive-Ins of Nev., Inc.*, 101 Idaho 94, 609 P.2d 161 (1980).

County-Wide Levy.

The provisions of the statute authorizing the levy for county school emergency fund is explicit in directing that the levy be made upon all taxable property of the county. Since the requested levy must be county-wide, it does not lack uniformity of taxation within the defendant county. *Board of Trustees v. Board of Comm'rs*, 83 Idaho 172, 359 P.2d 635 (1961).

Cyclical Revaluation Plans.

A multi-year revaluation plan is not constitutionally disuniform merely because only a portion of the county property is reappraised and entered on the tax rolls in a given year, thus, even though cyclical revaluation plans reappraise only a portion of the taxable property in each year of a recurring cycle, they consistently pass constitutional muster where they are systematic, consistent and continuous. *Justus v. Board of Equalization*, 101 Idaho 743, 620 P.2d 777 (1980).

Double Taxation.

It is not double taxation to levy tax on billiard tables according to their value, and at the same time to require proprietor thereof to pay a license tax. *State v. Jones*, 9 Idaho 693, 75 P. 819 (1904).

Prohibition of double taxation contained in this section is directed against taxing of the same property twice in the same year for the same purpose, while other like and similar property is taxed only once during same period for that purpose. It does not extend to prevent a special levy, for road purposes only, under S.L. 1901, p. 78, on all property of county, although such property is also taxed in the general levy for the road funds of county. *Humbird Lumber Co. v. Kootenai County*, 10 Idaho 490, 79 P. 396 (1904).

It is not double taxation for the statute to authorize board of county commissioners to provide that seventy-five per cent of the general tax levy raised for road purposes in a good road district shall be expended in such district, and twenty-five per cent shall go into the county road fund for expenditure in the remaining portions of county. *Hettinger v. Good Rd. Dist. No. 1*, 19 Idaho 313, 113 P. 721 (1911).

Act taxing producers of electricity is not invalid as imposing double license because of franchise tax imposed on all corporations of

state. *Utah Power & Light Co. v. Pfof*, 52 F.2d 226 (D. Idaho 1931).

Overlapping levies do not constitute duplicate taxation within the meaning of this section. Duplicate taxation is the taxation of the same property twice during the same year for the same purpose while other like property is taxed only once for the same purpose. *Oregon S.L.R.R. v. Washington County*, 54 Idaho 171, 30 P.2d 198 (1934).

An occupation excise tax, as against currently levied ad valorem and income taxes, all for the support of the public schools, does not result in duplicate taxation. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

Exemptions.

Power of legislature to tax or to exempt from taxation is plenary save only as it may be limited by state or federal Constitutions. *Achenbach v. Kincaid*, 25 Idaho 768, 140 P. 529 (1914); *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

Exemption from bond and license tax of public carriers by rail is not unreasonable or arbitrary since such carriers are under control of public utilities commission or municipal authority. *Smallwood v. Jeter*, 42 Idaho 169, 244 P. 149 (1926).

Most states have limited power to grant exemptions to such as are expressly enunciated in their constitutions. Idaho is almost unique in refusing to limit plenary power of its legislature to grant such exemptions as they may see fit. *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

Constitution explicitly directing and contemplating that legislature may grant exemptions should not be construed to prevent what it allows. *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

Exemption under this section is not donation or extension of credit prohibited under article 8, §§ 2 and 4. *Williams v. Baldrige*, 48 Idaho 618, 284 P. 203 (1930).

This section gives legislature authority to exempt shares of stock of building and loan associations from taxation. *State ex rel. Bank of Eagle v. Leonardson*, 51 Idaho 646, 9 P.2d 1028 (1932).

The legislature has the right and power to classify for taxation purposes, and, in so classifying, make exemptions. *John Hancock Mut. Life Ins. Co. v. Haworth*, 68 Idaho 185, 191 P.2d 359 (1948).

The purpose of exemptions of privately owned property from taxation undoubtedly is to promote the public welfare and the right of the legislature to exempt privately owned property is recognized if it is exercised to encourage private enterprise and thereby further the public welfare. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80

Idaho 206, 327 P.2d 766 (1958).

None of the property of the corporation involved, neither the lots sold for burial purposes nor the unplatted acreage, is exempt from the tax levied and assessed since such corporation was not a public cemetery within the intent and meaning of § 63-105 so as to entitle it to exemption from taxation. *Sunset Mem. Gardens, Inc. v. Idaho State Tax Comm'n*, 80 Idaho 206, 327 P.2d 766 (1958).

Tax exemption permitted by Laws 1959, ch. 265 is invalid as it is neither "necessary" nor "just." *Village of Moyie Springs v. Aurora Mfg. Co.*, 82 Idaho 337, 353 P.2d 767 (1960).

This section is significant as indicating a deliberate intention to leave with the legislature a very broad discretion in dealing with tax exemptions. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

Idaho Code § 63-105Z, spreading impact of ad valorem exemptions out over a four-year period by increasing them in steps from partial to whole exemptions, was not prohibited by the Constitution, since legislature has constitutional authority to grant exemptions from taxation in toto and in futuro. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

Statement in *Idaho Tel. Co. v. Baird*, 91 Idaho 425, 423 P.2d 337 (1967), that "Framers of Idaho's Constitution intended only two alternatives: either that property would be subject to one uniform nondiscriminatory rate of assessment and taxation or, that it would be entirely exempt from the burden of ad valorem taxation" it at most obiter dictum. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

A direct exemption of "all livestock, fur-bearing animals, fish, fowl and bees" from all ad valorem taxation would have been valid and binding. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

Idaho Constitution grants the legislature plenary power to bestow tax exemptions; exemption of occasional sales by nonretailers from sales tax under former § 63-3622 prior to its 1967 amendment was authorized. *Evans v. Idaho State Tax Comm'n*, 95 Idaho 54, 501 P.2d 1054 (1972).

The tax exemption given to the Health Facilities Authority in § 39-1452 qualifies as "necessary and just" and is valid under this section as it favors no private party at the expense of another, increases attractiveness of the bonds, reduces interest expense, and the public are the beneficiaries of the improved health care made possible by the sale of bonds and the proceeds devoted to improving or building medical facilities. *Board of County Comm'rs v. Idaho Health Facilities Auth.*, 96 Idaho 498, 531 P.2d 588 (1975).

The provision of this section which expressly authorizes "such exemptions from taxation as from time to time shall seem

necessary and just" does not mean that property may be wholly, but not partially, exempt; therefore, the partial exemption under § 63-105DD of owner-occupied residential improvements does not violate this section or Const. art. VII, § 2. *Simmons v. Idaho State Tax Comm'n*, 111 Idaho 343, 723 P.2d 887 (1986).

—Intent of Constitutional Convention.

In considering question whether net income method of mine assessment is obnoxious to constitutional provisions, the court said:

"There can be no question that at that time there was a prevalent sentiment in favor of stimulating and fostering the development of mineral lands by relieving such property from the burden of taxation. The territorial statutes wholly exempted 'mining claims,' and while more recently it has been held by a majority of the Supreme Court of the state (in *Salisbury v. Lane*, 7 Idaho 370, 63 P. 383 (1900)), that the exemption did not extend to patented 'mining claims,' still it is thought that prior to the rendition of this decision the view maintained in the able dissenting opinion was generally accepted. But, be that as it may, even though limited in its application to unpatented claims, the statute would in that early day operate to exempt most mining property, for there was no great advantage, especially in the case of an operating mine, in having a patent. The sentiment in favor of the generous treatment of mining property is clearly reflected in the debates in the constitutional convention upon the subject of taxation, and I have little doubt that, while the disposition of the convention was in favor of the method here assailed, it was not expressly provided for in the Constitution, out of deference to the desire of many to leave the whole matter to the discretion of the legislature. And article 7 was finally adopted, I think, with the understanding that the matter was so left to the discretion of the legislature. The clause 'uniform upon the same class of subjects' seems to have been borrowed from the Colorado Constitution, and in April, 1889, a few months before the convention, the Supreme Court of Colorado, in *People ex rel. Iron Silver Mining Co. v. Henderson*, 12 Colo. 369, 21 P. 144 (1888), held valid revenue statutes very similar to those presently involved. The decision was published in April, 1889, and it is not unreasonable to assume that it attracted general attention in Idaho, where like conditions were to be found, and especially where preparation was being made for statehood. It must have been known to the convention, having as it did, among its members many who were eminent at the bar, and surely, if it was intended to prohibit the Idaho legislature from doing the very thing which the Colorado legislature had done, and which

the Supreme Court of that state had held to be not violative of the Constitution, the language of that Constitution would not have been borrowed without some express provision denying to the legislature the power to do the objectionable thing. Admittedly, as was said in *Salisbury v. Lane*, *supra*, it was intended to confer on the legislature the power to exempt mining property entirely from taxation, and, as we have seen, the people were living under a system where it was in fact largely, if not entirely exempt. We can not, therefore, by now assuming the unreasonableness or the inequality of the income method, draw an inference against the intention of either the convention or the people to leave the matter to the discretion of the legislature." *Hanley v. Federal Mining & Smelting Co.*, 235 F. 769 (D. Idaho 1916).

It is very clear from proceedings and arguments of the constitutional convention that they intended that legislature should have the sole right to determine what property should be exempt from taxation. *Achenbach v. Kincaid*, 25 Idaho 768, 140 P. 529 (1914).

The framers of this section intended that the Legislature have broad discretion in making property tax exemptions. *Simmons v. Idaho State Tax Comm'n*, 111 Idaho 343, 723 P.2d 887 (1986).

Gasoline Tax.

This provision is not offended by increasing the amount of tax on motor fuel. Furthermore, this section does not apply to excise taxes. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Levy of tax on gasoline to acquire a toll bridge does not violate this section. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Highway Districts.

County bonds issued for road and bridge purposes are a charge against all the property in county, including property within confines of highway district. This does not result in double taxation even though highway district may also issue bonds and levy taxes. *Independent Hwy. Dist. No. 2 v. Ada County*, 24 Idaho 416, 134 P. 542 (1913).

Under this provision, the proportionate share of indebtedness of a highway district divided by statute, which is assessed to that part of the district which is attached by the statute to another district of the same class, becomes the indebtedness of the whole of the consolidated district. *Oliver v. Wendell Hwy. Dist.*, 38 Idaho 635, 224 P. 81 (1924).

Retention of money collected from property within highway district under warrant redemption levy and used by county in redemption of outstanding county road and bridge warrants does not amount to double taxation in violation of this section. *Golden Gate Hwy.*

Dist. v. Canyon County, 45 Idaho 406, 262 P. 1048 (1927).

Improvement Assessments.

An assessment wholly dependent upon benefits to accrue, no assessment being made where no benefits accrue, is not a tax within the purview and meaning of the Constitution, but a charge in rem against the specific tracts of land assessed for benefits. *Elliott v. McCrear*, 23 Idaho 524, 130 P. 785 (1913); *Booth v. Groves*, 43 Idaho 703, 255 P. 638 (1927).

Provisions of irrigation district law authorizing organization, assessment for upkeep, and issuance of bonds in support thereof are not in conflict with any of provisions of the Constitution. *American Falls Reservoir Dist. v. Thrall*, 39 Idaho 105, 228 P. 236 (1924). Wherein it is held that assessment of benefits provided for by S.L. 1913, ch. 16, p. 58, is not tax within purview of this section.

This section has no application to assessments levied for local improvements but applies only to levy and collection of taxes for governmental purposes. *Brown v. Shupe*, 40 Idaho 252, 233 P. 59 (1924).

Drainage district assessments are not "taxes" within usual meaning of Constitution and statutes, and do not fall within constitutional restraints. *Heffner v. Ketchen*, 50 Idaho 435, 296 P. 768 (1931).

Drainage district assessments being assessments made only according to benefits received do not constitute a tax within the purview of this section. *Straus v. Ketchen*, 54 Idaho 56, 28 P.2d 824 (1933).

Drainage assessments do not constitute taxes within the purview of this section, but they are valid liens against property taken by county for nonpayment of taxes. *Morgan, J., dissenting. Smith v. City of Nampa*, 57 Idaho 736, 68 P.2d 344 (1937).

A developer's filing of a Declaration of Condominium for an apartment complex triggered a new classification of its property, a discrete classification which rendered adjusted assessment on the basis of the altered classification constitutionally valid. *Fairway Dev. Co. v. Bannock County*, 113 Idaho 933, 750 P.2d 954 (1988).

Income Tax.

The Idaho income tax law imposing a graduated impost on net incomes does not violate this section. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Income tax is an excise tax. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

The legislature, in defining the term "gross income" of life insurance companies to mean the gross amount received during a taxable year from interest, dividends and rents arising within the state, legislated within its power so to do. *John Hancock Mut. Life Ins.*

Co. v. Haworth, 68 Idaho 185, 191 P.2d 359 (1948).

Increase of Rate.

Increase of rate on merchandise, machinery, furniture, and fixtures within county by state tax commission from 23% to 29.9 was not justified where other classes of personal property within county was taxed at rate of 23%, since action of commission did not attain uniformity of taxation, but destroyed uniformity of taxation. *Chastain's, Inc. v. State Tax Comm'n*, 72 Idaho 344, 241 P.2d 167 (1952).

License Tax.

Graduated license tax imposed on liquor traffic does not violate the requirement of equality of taxation imposed by this section. *State v. Doherty*, 3 Idaho 384, 29 P. 855 (1892).

Power to raise revenue under this section applies to taxes in the ordinary sense of that word and does not include license or per capita taxes elsewhere provided for (art. 7, § 2). *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923).

Statute which in reality imposes tax in guise of fee, such tax being in violation of this section, will be held unconstitutional. *Chapman v. Ada County*, 48 Idaho 632, 284 P. 259 (1930).

A chain store tax is not invalid because it is inapplicable to gasoline filling stations. *J.C. Penney Co. v. Diefendorf*, 54 Idaho 374, 32 P.2d 784 (1934).

License or excise taxes are not property taxes which must be levied uniformly by value. *J.C. Penney Co. v. Diefendorf*, 54 Idaho 374, 32 P.2d 784 (1934).

This provision of the Constitution does not prohibit dual taxation of property unless it relates to ad valorem taxes. The caravan tax does not exact an ad valorem tax but an excise or license tax and, though resident dealer caravanning must pay all other statutory taxes plus the caravan tax, this does not make the imposition of the tax invalid. *Geo. B. Wallace, Inc. v. Pfost*, 57 Idaho 279, 65 P.2d 725 (1937).

Market Value.

A proper determination of the market value of taxable property should involve an analysis of multiple factors including the actual cost of the property and its actual sale value. *Merris v. Ada County*, 100 Idaho 59, 593 P.2d 394 (1979).

Motor Vehicles.

Law providing for licenses on motor vehicles rated according to horsepower is not contrary to the provisions of this section. In re *Kessler*, 26 Idaho 764, 146 P. 113, 1917A Ann. Cas. 228, 1915D L.R.A. (n.s.) 322 (1915).

License tax provided by S.L. 1925, ch. 197, § 5 (now repealed), is one not laid upon vehicle but upon privilege of using highway

and is not unconstitutional. *Smallwood v. Jeter*, 42 Idaho 169, 244 P. 149 (1926).

Classification of auto transportation companies as distinct from private cars using highway for transportation of owners' personal property is not unreasonable. *Smallwood v. Jeter*, 42 Idaho 169, 244 P. 149 (1926).

Exemption under auto transportation act (S.L. 1925, ch. 197, now repealed) as to bonds and license tax of vehicles used exclusively for transportation of school children is not unreasonable. *Smallwood v. Jeter*, 42 Idaho 169, 244 P. 149 (1926).

This section is not violated by uniform registration act classifying motor vehicles and defining "commercial trucks." *Curtis v. Pfost*, 53 Idaho 1, 21 P.2d 73 (1933).

Statute licensing auto trailers and imposing higher license on trailers used in connection with auto stages, being a license and not a general tax, does not violate this section. *Garrett Transf. & Storage Co. v. Pfost*, 54 Idaho 576, 33 P.2d 743 (1933).

This provision refers to taxation in the ordinary sense and is inapplicable to motor vehicle registration licenses. *Garrett Transf. & Storage Co. v. Pfost*, 54 Idaho 576, 33 P.2d 743 (1933).

Multi-Year Property Valuation.

A multi-year program of property valuation for all properties within county assessor's jurisdiction pursuant to § 63-221 (prior to 1979 amendment) which immediately reassessed plaintiff's property but delayed other property until the final year of the plan, did not violate this section, since the plan was not arbitrary, capricious nor discriminatory as to plaintiff. *Brammer v. Latah County Assessor*, 102 Idaho 437, 631 P.2d 219 (1981).

Operating Property of Utilities.

Section 63-707 is not unconstitutional because it provides a different tax treatment of the operating property of electric public utilities as contrasted with the tax treatment of the operating property of all other utilities and railroads. *School Dist. No. 25 v. State Tax Comm'n*, 101 Idaho 283, 612 P.2d 126 (1980).

The uniformity clause only requires that the tax rate shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax; hence, the fact that under the provisions of § 63-707, the "value per mile" of operating property of an electric utility will differ as between various taxing districts does not render the statute violative of this section. *School Dist. No. 25 v. State Tax Comm'n*, 101 Idaho 283, 612 P.2d 126 (1980).

"Property" Defined.

Courts take judicial notice that income as such was never assessed or taxed as "proper-

ty" in this state. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

The term "property" as used herein is in its commonly accepted significance. *Diefendorf v. Gallet*, 51 Idaho 619, 10 P.2d 307 (1932).

Revaluation Plan.

In determining whether a revaluation plan meets constitutional standards of equality and uniformity, all relevant circumstances should be taken into consideration, including the limitations of time and staff, the nature and extent of existing inequities in the tax rolls, the extent to which such existing inequities are rectified by the plan, the amount and duration of temporary disparities under the plan, available alternatives, and whether non-implementation of the plan would perpetuate existing inequities. *Justus v. Board of Equalization*, 101 Idaho 743, 620 P.2d 777 (1980).

Where a county's revaluation plan was designed to rectify the greatest inequities in the shortest amount of time and where county revalued the majority of property in the first year, the remainder, except for commercial improvements, in the second year, and achieved a uniform base in the third year, the plan was systematic, consistent, coherent, orderly, nondiscriminatory and in compliance with the 14th Amendment of the United States Constitution and this section. *Justus v. Board of Equalization*, 101 Idaho 743, 620 P.2d 777 (1980).

Sales Tax.

The state sales tax law does not violate this section because of the exemptions it contains. The uniform tax requirement applies to ad valorem taxes and not to an excise tax such as the sales tax. *Johnson v. Diefendorf*, 56 Idaho 620, 57 P.2d 1068 (1936).

Showing of Discrimination.

An individual who claims that a selective assessment procedure has deprived him or her of the protection guaranteed by the state constitutional requirement of uniformity of taxation must show a deliberate plan to discriminate based upon an unjustifiable or arbitrary classification. *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980).

Solid Waste Disposal Fee.

A solid waste disposal "fee" for residential dwellings was reasonably related to the services rendered by the county in acquiring, establishing, maintaining and operating its solid waste disposal system. The fee was authorized by I.C. § 31-4404(2) and was not an illegal "tax" in violation of this section and Article 7, § 4 of the Idaho Constitution. *Kootenai County Property Ass'n v. Kootenai County*, 115 Idaho 676, 769 P.2d 553 (1989).

Supplemental Declarations.

The Ada County assessor's decision to require supplemental declarations only of certain types of taxpayers who actually did acquire or who were likely to have acquired nonexempt personal property during the 1973 tax year did not result in a violation of the Idaho constitutional requirement of uniformity of taxation. *Xerox Corp. v. Ada County Assessor*, 101 Idaho 138, 609 P.2d 1129 (1980).

Taxation of Mines.

Method of taxing mining property prescribed by state revenue laws, the distinctive feature of which is that instead of assessing ore bodies, the net proceeds of operation for the preceding year are taxed, in addition to the value of the surface and improvements, is constitutional. *Hanley v. Federal Mining & Smelting Co.*, 235 F. 769 (D. Idaho 1916).

The occupation of mining is valuable, and, when productive, may legitimately be the subject of distinct taxation, separate and apart from the income derived therefrom and thereby, and the value of the mine and the improvements and equipment thereon. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

The excise or occupation tax imposed by statute on the occupation of mining in this state is not double taxation. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

Uniform Valuation.

Constitutional requirement of uniformity of taxation is self-acting, and applies to all officers and boards that have anything to do with the levy and assessment of taxes. *Orr v. State Bd. of Equalization*, 3 Idaho 190, 28 P. 416 (1891).

Provision that all taxes shall be uniform relates only to taxation according to commonly accepted meaning of that term, by assessment and levy based on valuation. *Hartman v. Meier*, 39 Idaho 261, 227 P. 25 (1924).

Evidence in the cited case failed to show that the state board of equalization discriminated against railroad in valuation of property for taxation. *Oregon Short Line R.R. v. Ross*, 52 F.2d 695 (D. Idaho 1931).

It was the fundamental idea of the framers of the Constitution that there should be a uniform valuation of property throughout the state. *City of Pocatello v. Ross*, 51 Idaho 395, 6 P.2d 481 (1931).

Uniformity in taxation applies both to mode of assessment and rate of tax. *Chastain's, Inc. v. State Tax Comm'n*, 72 Idaho 344, 241 P.2d 167 (1952).

Former law that provided for discontinuance of attendance units within reorganized districts, either by vote of the trustees, or by vote of the electors did not violate this section

since in either event the tax would be uniform within the district, even though there might be different costs in the operation of the different school units. *Robbins v. Joint Class A. Sch. Dist. No. 331*, 72 Idaho 500, 244 P.2d 1104 (1952).

Where certain property is assessed at a higher value than all other property and a standard in determining the value for assessment purposes is used, which does not conform to the standard generally used, the taxpayer is entitled to a reduction in conformance to the standard used in assessing other property. In *re Farmer's Appeal*, 80 Idaho 72, 325 P.2d 278 (1958).

The provision of § 63-102 which provides that real and personal property subject to assessment for tax purposes must be assessed at its full cash value, is subject to limitation that the values fixed for taxation purposes must be uniform. Where a percentage standard of actual cash value is used to determine the assessed value, such standard should be applied to all property assessed. In *re Farmer's Appeal*, 80 Idaho 72, 325 P.2d 278 (1958).

Article 7, § 5 of the Idaho Constitution is not violated by disparity in mill level among various counties of a public health district necessary to obtain per capita assessment because the constitutional requirement is only that taxes be levied uniformly throughout a particular county. *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972).

Where implementation of revaluation plan quickly revalued properties where prior disparities were most prevalent with the effect that the taxpayers who suffered the greatest increases were the same taxpayers who had benefited by lack of uniformity of valuation in prior tax years and where nearly all property in the county was scheduled to be valued to 80 percent or more of market value by the next taxable year, the plan did not violate the uniformity provision of the 14th Amendment of the United States Constitution or this section. *Justus v. Board of Equalization*, 101 Idaho 743, 620 P.2d 777 (1980).

Valuation of Improvements.

Where the formula adopted by the Board of Tax Appeals and affirmed by the District Court amounted to a 27 percent reduction in the valuation of improvements on commercial property, which reduction had already been discriminately applied to residential and farm properties, and which thereby reduced the valuation on the commercial property as would equalize it with the values placed on other properties, the district court was merely in keeping with the holdings of prior Idaho case law. *County of Ada v. Red Steer Drive-Ins of Nev., Inc.*, 101 Idaho 94, 609 P.2d 161 (1980).

Worker's Compensation.

The workman's compensation statute is not a revenue act or an act levying a tax within the purview of this section, nor is it a license or excise tax. The clause requiring payment of \$1000 to the state treasury for the industrial accident fund when no claim is made by dependents for injury resulting in death of employer is valid. *State ex rel. Parsons v. Workman's Comp. Exch.*, 59 Idaho 256, 81 P.2d 1101 (1938).

Opinions of Attorney General. The combined requirements of a one percent property tax limitation contained in the proposed One Percent Initiative, and the uniform levy requirements of art. 7, § 5, of the Idaho Constitution create the inevitable result that property taxes in each taxing district will bear no rational relation to the needs of that district or to the wishes of the taxpayers of that district. OAG 91-9.

Although it was difficult to determine with certainty whether provisions of county highway district's ordinance allowing for discretionary application of impact fees outside of designated benefit zones, which required payment of fees without any apparent determination of need for services as a result of new

development and lacked clarity on accounting for revenues, was a disguised tax in violation of Const., Art. 7, §§ 4 and 5, such provisions were indicative of a tax rather than a fee. OAG 93-5.

The 1993 amendment to this section cannot be interpreted to create a developers' discount, for to do so would violate this section and Const., Art. 7, § 2 and might also force other taxpayers to challenge their assessed valuations on the grounds that developers are systematically assessed at lower rates; a better interpretation is that the present State Tax Commission rules are in full compliance with this section both before and after the 1993 amendment because these rules already require assessors to take into account a reasonable time allowed to consummate the sale of the property being assessed. OAG 94-1.

Since § 63-923 cannot be implemented, it has no effect on the implementation of those statutes affected by S.L. 1995, ch. 26. OAG 95-3.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1654, 1703.

§ 6. Municipal corporations to impose their own taxes. — The legislature shall not impose taxes for the purpose of any county, city, town, or other municipal corporation, but may by law invest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation.

Cited in: *City of Genesee v. Latah County*, 4 Idaho 141, 36 P. 701 (1894); *McConnell v. State Bd. of Equalization*, 11 Idaho 652, 83 P. 494 (1905); *School Dist. No. 8 v. Twin Falls County Mut. Fire Ins. Co.*, 30 Idaho 400, 164 P. 1174 (1917); *Stark v. McLaughlin*, 45 Idaho 112, 261 P. 244 (1927); *Idaho Tel. Co. v. Baird*, 91 Idaho 425, 423 P.2d 337 (1967); *Sun Valley Co. v. City of Sun Valley*, 109 Idaho 424, 708 P.2d 147 (1985).

ANALYSIS

Construction.
Counties.
Delegation of taxing powers.
Highway districts.
Irrigation districts.
Municipalities.
Power limited.
Public health districts.
School districts.

Construction.

This section relates to taxes, properly speaking, and does not apply to license taxes so as to render unconstitutional a law which imposes license taxes, proceeds of which may

be retained for use of county in which they are collected. *State v. Union Cent. Life Ins. Co.*, 8 Idaho 240, 67 P. 647 (1902).

This section forbids imposition of tax for purposes of any municipal corporation. It necessarily follows that it is without authority to make appropriations for any such purpose. *Gem Irrigation Dist. v. Van Deusen*, 31 Idaho 779, 176 P. 887 (1918).

This section forbids legislature to impose taxes indirectly through county or other municipal agency which it could not directly do itself. *Idaho County v. Fenn Hwy. Dist.*, 43 Idaho 233, 253 P. 377 (1926).

The Supreme Court would assume in favor of the constitutionality of a statute that the purpose of providing for a levy of a special tax in unorganized school districts was to provide revenue for the payment of tuition for children of school age residing in the districts, and where there were no children of school age within unorganized school districts and no outstanding claims, there could be no lawful tax, since there was no lawful purpose, and the people can not be taxed except for a lawful purpose. *Northern Pac. Ry. v. Shoshone County*, 63 Idaho 36, 116 P.2d 221 (1941);

Scandrett v. Shoshone County, 63 Idaho 46, 116 P.2d 225 (1941).

The prohibition contained in this section was not applicable to appropriation by legislature to local governmental units, of taxes derived from the "sales tax fund," since such taxes are obviously excise taxes; and by long history of judicial interpretation, this section has limited the prohibition to ad valorem or property taxes and has not applied it to excise taxes. Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969).

Counties.

This section does not prohibit the legislature from authorizing and requiring the county commissioners to levy a special ad valorem tax for purpose of liquidating existing indebtedness of the counties to the state. Gooding v. Proffitt, 11 Idaho 380, 83 P. 230 (1905).

The statute apportioning gasoline license revenue among the several counties does not contravene this section as an attempt to levy a state tax for county and municipal purposes. Ada County v. Wright, 60 Idaho 394, 92 P.2d 134 (1939).

Delegation of Taxing Powers.

It is erroneous to interpret this section to mean that the legislature may delegate taxing authority to municipal corporations only as to property taxes. Greater Boise Auditorium Dist. v. Royal Inn, 106 Idaho 884, 684 P.2d 286 (1984).

This section does not prohibit a legislative delegation of the power to impose a sales tax to an auditorium district. Greater Boise Auditorium Dist. v. Royal Inn, 106 Idaho 884, 684 P.2d 286 (1984).

Highway Districts.

Delegation of power to highway district to assess taxes within the district is not prohibited by the Constitution, even though a city, town, or village is included within such territory. Shoshone Hwy. Dist. v. Anderson, 22 Idaho 109, 125 P. 219 (1912).

Highway district is such taxing unit as is included in term "municipal corporation" as used in this section. Idaho County v. Fenn Hwy. Dist., 43 Idaho 233, 253 P. 377 (1926).

Road districts are not municipal corporations within the meaning of this section, therefore, the antinepotism law does not apply to officers of highway districts. Ex parte Rogers, 56 Idaho 521, 57 P.2d 342 (1936).

Irrigation Districts.

Assessments by irrigation districts are authorized under this section. Oregon S.L.R.R. v. Pioneer Irrigation Dist., 16 Idaho 578, 102 P. 904 (1909).

An irrigation district is a municipal corporation within the meaning of this section.

Pioneer Irrigation Dist. v. Walker, 20 Idaho 605, 119 P. 304 (1911); Ferbrache v. Drainage Dist. No. 5, 23 Idaho 85, 128 P. 553, 44 L.R.A. (n.s.) 538, 1915C Ann. Cas. 43 (1912); Gem Irrigation Dist. v. Van Deusen, 31 Idaho 779, 176 P. 887 (1918).

Municipalities.

While the constitution does not expressly provide that taxes be levied for a public purpose, it is necessarily implied, since the very foundation of the power to tax is the presence of a public purpose to be subserved by the expenditure for which the taxes are raised, and, besides, a municipal tax can be levied only for a municipal public purpose. By Leeper, J., dissenting. Oregon S.L.R.R. v. Berg, 52 Idaho 499, 16 P.2d 373 (1932).

This section is an inhibition on the legislature from imposing taxes for the purpose of any county, city, town, or other municipality and not a restriction upon municipalities. Hamilton v. McCall, 90 Idaho 253, 409 P.2d 393 (1965).

Power Limited.

The grant of taxing power to cities is not self-executing or unlimited; it is limited by what taxing power the legislature authorizes in its implementing legislation. Brewster v. City of Pocatello, 115 Idaho 502, 768 P.2d 765 (1988).

The constitutional grant of power to municipal corporations, to assess and collect taxes for all purposes of such corporations, is not self-executing or unlimited; it is limited by what taxing power the legislature authorizes in its implementing legislation. City of Lava Hot Springs v. Campbell, 125 Idaho 768, 874 P.2d 579 (Ct. App. 1994).

Public Health Districts.

Public health districts are not municipal corporations within the meaning of this section of the Constitution in that they do not act in the broad governmental manner but rather are a legislatively created administrative agency for a specific and limited purpose. District Bd. Health v. Chancey, 94 Idaho 944, 500 P.2d 845 (1972).

School Districts.

School district is not a municipal corporation within the meaning of this section. Fenton v. Board of Comm'rs, 20 Idaho 392, 119 P. 41 (1911); Barton v. Alexander, 27 Idaho 286, 148 P. 471, 1917D Ann. Cas. 729 (1915); Idaho Gold Dredging Co. v. Balderston, 58 Idaho 692, 78 P.2d 105 (1938).

Under this and the next preceding section, an act purporting to require the levy of a special tax in unorganized school districts, irrespective of the number of school children therein, and to provide for the turning of the money so raised over to the county at large to

be placed in the county treasury to the credit of the school fund, is unconstitutional. *Northern Pac. Ry. v. Shoshone County*, 63 Idaho 36, 116 P.2d 221 (1941); *Scandrett v. Shoshone County*, 63 Idaho 46, 116 P.2d 225 (1941).

A statute authorizing school district to enter into a contract to combine for educational purposes with another school district is not in violation of this provision. *Independent Sch. Dist. No. 6 v. Common Sch. Dist. No. 38*, 64 Idaho 303, 131 P.2d 786 (1942).

School district is not a municipal corporation within the meaning of this section. *Employment Sec. Agency v. Joint Class "A" Sch. Dist. No. 151*, 88 Idaho 384, 400 P.2d 377 (1965).

§ 7. State taxes to be paid in full. — All taxes levied for state purposes shall be paid into the state treasury, and no county, city, town, or other municipal corporation, the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for state purposes.

Cited in: *State v. Ada County*, 7 Idaho 261, 62 P. 457 (1900); *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937).

ANALYSIS

Collection fees.
Diverting tax moneys.
Priority.
Provision self-acting.
Refunds.

Collection Fees.

All taxes collected for state purposes must be paid into the state treasury without any deduction for fees for collecting same. *Guheen v. Curtis*, 3 Idaho 443, 31 P. 805 (1892).

Diverting Tax Moneys.

Session Laws 1915, ch. 27, §§ 12, 14, and 15, which provided for diverting from the state treasury money due to state from the counties, arising from taxation, and for paying it out by counties, to those engaged in emergency employment, were held to be in violation of this section and void. *Epperson v. Howell*, 28 Idaho 338, 154 P. 621 (1916).

Priority.

State taxes under this section and county and city taxes under § 63-102 are prior to special assessment for improvement. *Bosworth v. Anderson*, 47 Idaho 697, 280 P. 227, 65 A.L.R. 1372 (1929).

Tax liens on real property can not be made subordinate to other liens. *Kieldsen v.*

Opinions of Attorney General. The proposed One Percent Initiative would deny the consitutional principle of local self-determination and would force discrimination in local taxing authority; consequently, to impose a one percent limitation would require dismantling the system of property taxation under which Idaho has operated since statehood. OAG 91-9.

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. II, p. 1659.

Barrett, 50 Idaho 466, 297 P. 405, appeal dismissed, 284 U.S. 581, 52 S. Ct. 28, 76 L. Ed. 503 (1931).

This provision is mandatory and it makes taxes levied for state purposes a prior and superior lien to all other taxes, assessments, liens and encumbrances of every kind, so that a purchaser of land at tax sale takes title free from assessments levied by irrigation or sewage improvement districts. *Smith v. City of Nampa*, 57 Idaho 736, 68 P.2d 344 (1937).

Provision Self-Acting.

This section of the constitution is self-acting and goes into effect without any legislation. *Cunningham v. Moody*, 3 Idaho 125, 28 P. 395 (1891).

Refunds.

A county cannot deduct from its current remittance to the state the state's pro rata share of tax refund ordered by the court and the state cannot refund such pro rata share to the county without a legislative appropriation. *State ex rel. Williams v. Adams*, 90 Idaho 195, 409 P.2d 415 (1965).

Opinions of Attorney General. Personal property tax liens are entitled to first priority, even over antecedent encumbrances, including prior perfected purchase money security interests. OAG 85-1.

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. II, p. 1659.

§ 8. Corporate property must be taxed. — The power to tax corporations or corporate property, both real and personal, shall never be

relinquished or suspended, and all corporations in this state or doing business therein, shall be subject to taxation for state, county, school, municipal, and other purposes, on real and personal property owned or used by them, and not by this constitution exempted from taxation within the territorial limits of the authority levying the tax.

Cited in: Hanley v. Federal Mining & Smelting Co., 235 F. 769 (D. Idaho 1916); Guheen v. Curtis, 3 Idaho 443, 31 P. 805 (1892); Oregon S.L.R.R. v. Pioneer Irrigation Dist., 16 Idaho 578, 102 P. 904 (1909); Mundell v. Swedlund, 58 Idaho 209, 71 P.2d 434 (1937).

ANALYSIS

Exemptions.

Railroads.

Exemptions.

There is nothing in this section that forbids legislature to exempt corporate property. Williams v. Baldrige, 48 Idaho 618, 284 P. 203 (1930).

Exemption under this section is not donation or extension of credit prohibited by art. 8, §§ 2 and 4. Williams v. Baldrige, 48 Idaho 618, 284 P. 203 (1930).

§ 9. Maximum rate of taxation. — The rate of taxation of real and personal property for state purposes shall never exceed ten (10) mills on each dollar of assessed valuation, unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 9. The rate of taxation of real and personal property for state purposes shall never exceed 10 mills on each dollar of assessed valuation; and if the taxable property in the state shall amount to \$50,000,000 the rate shall not exceed 5 mills on each dollar of valuation; and whenever the taxable property in the state shall amount to \$100,000,000, the rate shall not exceed 3 mills on each dollar of valuation; and whenever the taxable property in the state shall amount to \$300,000,000 the rate shall never thereafter exceed one and one-half mills on each dollar of valuation, unless a proposition to increase such rate, specifying the rate proposed and the time during which the same shall be levied, shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it at such election."

It was amended, as proposed by S.L. 1905, p. 441, S.J.R. No. 6, and ratified at the general

Railroads.

The board of equalization's refusal to apportion to the city of Pocatello for city taxation the operating property of a railroad located therein did not violate this section. City of Pocatello v. Ross, 51 Idaho 395, 6 P.2d 481 (1931).

The tracks, right of way and right of occupancy, or franchise, of street railway to use a portion of city streets, is property benefited by street improvements to the extent of the space occupied by road and tracks which renders the company liable for its proportionate share of the cost. Reynard v. City of Caldwell, 55 Idaho 342, 42 P.2d 292 (1935).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1660.

election in November, 1906, to read as it now appears.

Cross ref. No state ad valorem taxes when sales tax is in force, § 63-922.

Cited in: Green v. State Bd. of Canvassers, 5 Idaho 130, 47 P. 259, 95 Am. St. R. 169 (1896).

ANALYSIS

Construction and effect.

Retiring bonded indebtedness.

Construction and Effect.

This section and § 11 have to do with biennial appropriations and not with indebtedness extending beyond the two-year period falling under art. 8, § 1, but the two articles must be read and considered together. Lyons v. Bottolfsen, 61 Idaho 281, 101 P.2d 1 (1940).

This section must be read with art. 7, § 11 and art. 8, § 1 regarding limitations on taxation and public indebtedness. Lyons v. Bottolfsen, 61 Idaho 281, 101 P.2d 1 (1940).

Retiring Bonded Indebtedness.

Tax levy for state purposes is intended to cover current and running expenses of maintaining and conducting state government and operation and maintenance of state institutions, and the maximum limit of taxation specified hereby does not include an additional levy for the purpose of paying interest

on, and providing a sinking fund for, the public or bonded indebtedness of the state incurred under art. 8, § 1. *Gooding v. Proffitt*, 11 Idaho 380, 83 P. 230 (1905).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1660.

§ 10. Making profit from public money prohibited. — The making of profit, directly or indirectly, out of state, county, city, town, township or school district money, or using the same for any purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law.

Comp. provisions: Utah. Art. 15, § 8.

Cited in: State ex rel. Rich v. Idaho Power Co., 81 Idaho 487, 346 P.2d 596 (1959).

District Highway Commissioners.

Provision of former § 40-1619 [see now § 40-612] prohibiting highway commissioners of a district from being interested, either directly or indirectly in a contract awarded by the board, is in conformance with constitu-

tional provision prohibiting any public officer from making a profit, directly or indirectly, by the use of public funds. *Nampa Hwy. Dist. No. 1 v. Graves*, 77 Idaho 381, 293 P.2d 269 (1956).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1678.

§ 11. Expenditure not to exceed appropriation. — No appropriation shall be made, nor any expenditure authorized by the legislature, whereby the expenditure of the state during any fiscal year shall exceed the total tax then provided for by law, and applicable to such appropriation or expenditure, unless the legislature making such appropriation shall provide for levying a sufficient tax, not exceeding the rates allowed in section nine of this article, to pay such appropriation or expenditure within such fiscal year. This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the state, or assist in defending the United States in time of war.

Cited in: *Gooding v. Proffitt*, 11 Idaho 380, 83 P. 230 (1905); *George ex rel. George v. Donovan*, 114 Idaho 388, 757 P.2d 651 (1987).

ANALYSIS

Effect of excise taxes.

Excessive appropriation bill.

Public indebtedness.

Effect of Excise Taxes.

The court takes judicial notice that a large part of the expenses of the state government is borne by excise taxes, not ad valorem, yet if this section be construed to demand sufficient levy by and of ad valorem taxes to insure all biennial appropriations, thus literally applied, all excise tax applications would be unconstitutional. It does not seem reasonable that the framers and adopters of the Constitution intended to forever saddle the burdens of government on real and personal property

by ad valorem taxes. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Excessive Appropriation Bill.

Fact that an appropriation bill passed by legislature appropriates money in excess of the general tax, levied to cover appropriation, does not render appropriation repugnant to this section, in absence of a showing that the estimated revenue to be derived from the state from other sources, such as license and per capita taxes and fees of officers, will be insufficient to make up deficiency. *Stein v. Morrison*, 9 Idaho 426, 75 P. 246 (1904).

Public Indebtedness.

This section and art. 7, § 9 must be read with art. 8, § 1 regarding limitation on taxation and public indebtedness. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Opinions of Attorney General. The constitutional restrictions of fiscal management

do not appear to affect participation in the delay of drawdown procedures implemented under 5 U.S.C. § 301 and 31 C.F.R. Part 205. OAG 83-6.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1681.

§ 12. State tax commission, members, terms, appointment, vacancies, duties, powers — County boards of equalization, duties. — There shall be a state tax commission consisting of four (4) members, not more than two (2) of whom shall belong to the same political party. The members of said commission shall be appointed by the governor, by and with the consent of the senate; the first commission to consist of one (1) commissioner appointed for a term of two (2) years, one (1) commissioner appointed for a term of four (4) years and two (2) commissioners appointed for a term of six (6) years, and appointments thereafter to be for a term of six (6) years; each commissioner to serve until his successor is appointed and qualified. If during the recess of the senate a vacancy occurs in said commission, it shall be the duty of the governor to fill such vacancy by appointment, and the appointee shall hold office for the unexpired term of his predecessor. The duties heretofore imposed upon the state board of equalization by the Constitution and laws of this state shall be performed by the state tax commission and said commission shall have such other powers and perform such other duties as may be prescribed by law, including the supervision and coordination of the work of the several county boards of equalization. The board of county commissioners for the several counties of the state, shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county, under such rules and regulations of the state tax commission as shall be prescribed by law.

Compiler's notes. As originally adopted, this section provided as follows:

“§ 12. **State board of equalization.** — There shall be a state board of equalization, consisting of the governor, secretary of state, attorney general, state auditor, and state treasurer, whose duties shall be prescribed by law. The board of county commissioners for the several counties of the state, shall constitute boards of equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county, under such rules and regulations as shall be prescribed by law.”

It was amended, as proposed by S.L. 1943, p. 381, S.J.R. No. 3, and ratified at the general election in November, 1944, to read as it now appears.

Cross ref. County board of equalization, meetings, powers, and duties, §§ 63-401, 63-402, 63-1904, 63-1905.

Equalization of assessments by tax commission, §§ 63-701 — 63-718.

Tax commission, law creating and defining its powers and duties, §§ 63-501 — 63-514.

Sec. to sec. ref. This section is referred to in § 63-501.

Cited in: Weiser Nat'l Bank v. Jeffreys, 14 Idaho 659, 95 P. 23 (1908); Oregon S.L.R.R. v. Pioneer Irrigation Dist., 16 Idaho 578, 102 P. 904 (1909); Blomquist v. Board of Comm'rs, 25 Idaho 284, 137 P. 174 (1913); Bills v. State, Dep't of Revenue & Taxation, 110 Idaho 113, 714 P.2d 82 (Ct. App. 1986).

ANALYSIS

Appeals to state board.
Apportionment of railroad taxes.
Assessment of omitted property.
Equalization of assessments.
Increase of rate.
Nature of county board.
Nature of state board.
Powers of commission.
Review of assessments.
Statutory remedies exclusive.

Appeals to State Board.

Provision in § 63-2210 providing for an appeal from county equalization board to state tax board does not violate Constitution, since this section provides that state tax commission “shall have such other powers and perform such other duties as may be pre-

scribed by law." *Utah Oil Ref. Co. v. Hendrix*, 72 Idaho 407, 242 P.2d 124 (1952).

If the action taken was by the county board of equalization, as the minutes recite, then the district court would acquire no jurisdiction on appeal, since the statute provides that appeals from the county board of equalization are to be taken to the state tax commission. In *re Felton's Petition*, 79 Idaho 325, 316 P.2d 1064 (1957).

Apportionment of Railroad Taxes.

Board of equalization (now tax commission), in refusing to apportion for city taxes some five million dollars worth of railroad operating property located in the city of Pocatello, did not violate sections 5, 8 or 12 of art. 7. *Pocatello v. Ross*, 51 Idaho 395, 6 P.2d 481 (1931).

The state board of equalization (now tax commission) had discretionary power not only to value and assess property but also to determine what property to value, such as property used but not owned by a railroad company. *Ada County v. Bottolfsen*, 61 Idaho 363, 102 P.2d 287 (1940).

Assessment of Omitted Property.

This section was not infringed by R.S., § 1483, as amended by S.L. 1899, p. 454, which authorized the board of equalization (now tax commission) to require assessor to assess any taxable property that had escaped assessment, increase valuations, or add to the amount, number, quantity or value of property. *Murphy v. Board of Comm'rs*, 6 Idaho 745, 59 P. 715 (1899).

Equalization of Assessments.

The state tax commission is constitutionally and statutorily empowered and authorized to equalize the assessments of property among the various counties of the state; accordingly, where the tax commission procedurally followed the proper state statutes prior to entering its directive to certain county auditors requiring that the county auditors enter upon the real property assessment rolls of their respective counties certain adjustments to accomplish equalization, the tax commission acted in accordance with the mandated procedures and those procedures did not violate the due process provisions of the United States Constitution or the State Constitution. *Idaho State Tax Comm'n v. Staker*, 104 Idaho 734, 663 P.2d 270 (1982).

Increase of Rate.

Increase of rate on merchandise, machinery, furniture, and fixtures within county by state tax commission from 23% to 29.9% was not justified where other classes of personal property within county was taxed at rate of 23%, since action of commission did not attain uniformity of taxation, but destroyed unifor-

mity of taxation. *Chastain's, Inc. v. State Tax Comm'n*, 72 Idaho 344, 241 P.2d 167 (1952).

Nature of County Board.

Board of county commissioners, when sitting as a board of equalization, is a distinct body, with distinct duties and functions, and its orders made while sitting as such board are not subject to the provisions of statutes authorizing appeals from the board of county commissioners. *Feltham v. Board of County Comm'rs*, 10 Idaho 182, 77 P. 332 (1904).

County board of equalization has authority to meet and raise valuations up to and on the fourth Monday in July. *Overland Co. v. Utter*, 44 Idaho 385, 257 P. 480 (1927).

The legislature had the power to authorize county commissioners to act as boards of equalization and to provide for an appeal from their acts to the district court and to authorize such court to modify their decision. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

Nature of State Board.

State board of equalization (now tax commission) was a constitutional board, clothed by statutory authority with quasi judicial powers in regard to the assessment of certain classes and kinds of property. *Northwest Light & Water Co. v. Alexander*, 29 Idaho 557, 160 P. 1106 (1916).

State board of equalization (now tax commission) had powers in assessing corporate property which public utilities commission does not possess. *Northwest Light & Water Co. v. Alexander*, 29 Idaho 557, 160 P. 1106 (1916).

The state board of equalization (now tax commission) is a constitutional board, art. 7, § 12. The assessor is a constitutional officer, art. 18, § 6. Thus they are of equal constitutional creation and authority and their duties may be prescribed by the legislature, art. 7, § 12; art. 18, § 11. *Ada County v. Bottolfsen*, 61 Idaho 363, 102 P.2d 287 (1940).

Powers of Commission.

Under the provision of this section that the commission "shall have such other powers and perform such other duties as may be prescribed by law," it was not an unconstitutional delegation of legislative authority for the legislature to authorize the commission to create and define classes of property for tax purposes. *Abbot v. State Tax Comm'n*, 88 Idaho 200, 398 P.2d 221 (1965).

Review of Assessments.

Legislature may empower district court to review acts of commissioners and modify assessments made by them. Court in so acting is not assessing but equalizing taxes. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

Statute authorizing the district court on appeal to "modify" county board of equalization's tax assessment is not invalid as conferring on the judiciary executive functions. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

A taxpayer, who did not complain before the board of equalization of the county with reference to the 1936 assessment, and who did not appeal from an adverse decision of the board on taxpayer's complaint as to 1940 assessment, could not maintain an action in court for the recovery of taxes paid under protest for both years. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

The 1944 amendment to this section creating the State Tax Commission, merely directed it to continue to perform the statutory duties imposed upon its predecessor and, in addition, gave it the constitutional duty of "supervision and coordination of the work of the several county boards of equalization"; consequently, the Tax Commission's duty to conduct statewide assessments of the railroads' operating properties is statutory in nature and not constitutional. Since the legislature has plenary power in all matters of legislation except as prohibited or limited by the Constitution, it is free to amend or repeal its enactments and there are no provisions in

the Constitution prohibiting it from creating a Board of Tax Appeals empowered to review the Tax Commission's assessments of the railroads' operating property; accordingly, the legislative authorization that the Board of Tax Appeals has the power to review the Tax Commission's assessments of railroads' operating properties is not prohibited by the Constitution. *Union Pac. R.R. v. Board of Tax Appeals*, 103 Idaho 808, 654 P.2d 901 (1982).

Statutory Remedies Exclusive.

The statutory remedies afforded to an aggrieved taxpayer are exclusive, and a taxpayer may not maintain an action against a county for a general money judgment for the amount of taxes erroneously exacted, where the tax is not absolutely void. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

Where a tax is not void ab initio and the legislature has empowered an administrative board to determine the question with right of appeal to the courts from the board's decision, such remedies are exclusive. *Washburn-Wilson Seed Co. v. Jerome County*, 65 Idaho 1, 138 P.2d 978 (1943).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1684.

§ 13. Money — How drawn from treasury. — No money shall be drawn from the treasury, but in pursuance of appropriations made by law.

Cited in: *Jeffreys v. Huston*, 23 Idaho 372, 129 P. 1065 (1913); *Evans v. Huston*, 27 Idaho 559, 150 P. 14 (1915); *State v. National Sur. Co.*, 29 Idaho 670, 161 P. 1026, 2 A.L.R. 251 (1916); *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940); *Dahl v. Wright*, 65 Idaho 130, 139 P.2d 754 (1943).

ANALYSIS

"Appropriation".

Examination of claims.

Form of appropriation.

Insurance fund.

Limitations on right to appropriate.

Necessity of appropriation.

Purpose of section.

Transfer of funds.

"Appropriation".

An appropriation is authority of legislature given at proper time and in legal form to proper officers to apply specific sum from designated fund out of treasury for specified object or demand against state. In re *Huston*, 27 Idaho 231, 147 P. 1064 (1915); *Herrick v. Gallet*, 35 Idaho 13, 204 P. 477 (1922); *Jackson v. Gallet*, 39 Idaho 382, 228 P. 1068 (1924).

An appropriation, within meaning of this

section, is authority from legislature expressly given in legal form to proper officers to pay from public moneys a specified sum, and no more, for a specified purpose and no other. *Jackson v. Gallet*, 39 Idaho 382, 228 P. 1068 (1924).

Constitution does not define an appropriation or specify when or how an appropriation by law shall be made, and these matters are therefore proper subjects of judicial interpretation. *Jackson v. Gallet*, 39 Idaho 382, 228 P. 1068 (1924).

The element of specificness required by *Herrick v. Gallet*, 35 Idaho 13, 204 P. 477 (1922) is necessary only when the appropriation is made payable from the general fund, and required solely as a protection against unlimited withdrawals from such fund under authority of a general appropriation. *McConnel v. Gallet*, 51 Idaho 386, 6 P.2d 143 (1931).

Appropriation is authority from the legislature expressly given in legal form to the proper officers, to pay from the public moneys, a specified sum, but when appropriation is made payable from a special fund, it is not necessary to appropriate a specific sum.

McConnel v. Gallet, 51 Idaho 386, 6 P.2d 143 (1931).

Examination of Claims.

This section provides the power and duty of the executive department through its board of examiners to examine claims, thereby to determine that the appropriation is expended for the purpose for which appropriated. Rich v. Williams, 81 Idaho 311, 341 P.2d 432 (1959).

Form of Appropriation.

While no set form of words is necessary to make appropriation, language should be used that would show intent of legislature to make appropriation. Herrick v. Gallet, 35 Idaho 13, 204 P. 477 (1922); Jackson v. Gallet, 39 Idaho 382, 228 P. 1068 (1924).

Mere declaration that certain charges against state must be paid out of treasury does not necessarily make appropriation. Herrick v. Gallet, 35 Idaho 13, 204 P. 477 (1922); Jackson v. Gallet, 39 Idaho 382, 228 P. 1068 (1924).

Appropriation for the "industrial accident board, state employment service (state employment service fund)" sufficiently expresses the intent to appropriate from the state employment service fund which is composed of money contributed by the state and the United States and did not suggest intent to appropriate from the general fund. Morgan, J., dissenting. Robinson v. Enking, 58 Idaho 24, 69 P.2d 603 (1937).

The state highway commission act is not obnoxious to this section because it is not, as contended, an attempted appropriation of public funds to the department generally. It is specific enough to mark the limit of expenditures for each department. State ex rel. Taylor v. Taylor, 58 Idaho 656, 78 P.2d 125 (1938).

The statute providing a revolving fund to be used by officers of various state departments for official use does not authorize the withdrawal of funds from the state treasury without appropriation. Suppiger v. Enking, 60 Idaho 292, 91 P.2d 362 (1939).

An appropriation to local governmental units of a percentage of "sales tax fund" was an "appropriation" within the meaning of this section despite fact it was not for a specified sum, and no more, since this element of specificalness is necessary only when the appropriation is made payable from the general fund; not when it is made payable from a special fund. Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969).

Where appropriation to local governmental units of a percentage of "sales tax fund" was to be "applied by such taxing districts in the same manner and in the same proportions as revenues from ad valorem taxation" and was to be considered and budgeted against at the same time and in the same manner "as revenues from taxation on all classes of personal

property which these moneys replace," legislature knew, or should have known, exactly for what purposes the sales tax grants were to be used; thus the requirements of the judicial interpretation of this section were met. Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969).

The continuing appropriation provided for in § 42-1752, which established the Idaho Water Resource Board Revolving Development Fund, does not violate this section. Nelson v. Marshall, 94 Idaho 726, 497 P.2d 47 (1972).

Insurance Fund.

The money in the state insurance fund does not belong to the state and is not in the state treasury within the meaning of this section. It is deposited with the state treasurer as custodian and is held by him as such for the contributing employers and the beneficiaries of the compensation law and for the payment of the costs of the operation of the fund. State ex rel. Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

Limitations on Right to Appropriate.

Right of legislature to appropriate public funds is no greater than its right to tax. If an object can not have a tax levied for it, then no appropriation of public money can be made to it. (Holding unconstitutional an act appropriating money for purchase of state lands for the Gem Irrigation District.) Gem Irrigation Dist. v. Van Deusen, 31 Idaho 779, 176 P. 887 (1918).

While exact amount of expenses can not always be ascertained or fixed by legislature, when they have not yet been incurred, it is usual and necessary to fix maximum, specifying amount above which they can not be allowed. Blaine County Inv. Co. v. Gallet, 35 Idaho 102, 204 P. 1066 (1922).

As all appropriations must be within legislative will, it is essential to have amount of appropriation or maximum sum stated. This legislative power can not be delegated or left to recipient to command from state treasury sums to any unlimited amount for which he might file claims. Blaine County Inv. Co. v. Gallet, 35 Idaho 102, 204 P. 1066 (1922).

Necessity of Appropriation.

Where an act creating an office fixes compensation of officer and time of payment, and authorizes comptroller to draw his warrant to pay the same when due, no further appropriation is required. Gilbert v. Moody, 3 Idaho 3, 25 P. 1092 (1891).

Attorney employed by the state auditor pursuant to statute which authorized such employment and provided that the expense must be paid out of the state treasury, was not entitled to a warrant in payment of his services until an appropriation was made therefor. Kingsbury v. Anderson, 5 Idaho 771, 51 P. 744 (1898).

While board of examiners may allow a claim which they find to be correct, yet no warrant can issue therefor until legislature makes an appropriation to cover the same. *Kroutinger v. Board of Exmrs.*, 8 Idaho 463, 69 P. 279 (1902).

Where a salary has been fixed by legislature for a constitutional office, statute directing the payment of salaries authorizing auditor to draw a warrant therefor is sufficient appropriation. *Reed v. Huston*, 24 Idaho 26, 132 P. 109, 1915A Ann. Cas. 1237 (1913); *Rich v. Huston*, 24 Idaho 34, 132 P. 112 (1913).

This section prohibits payment by the state of any money except pursuant to and in accordance with an act of legislature expressly appropriating it to the specific purpose for which it is paid, and, since no money has been appropriated for that purpose, the state is precluded from paying its proportionate share of the expense of giving the emergency employment contemplated by S.L. 1915, ch. 27, p. 80. *Epperson v. Howell*, 28 Idaho 338, 154 P. 621 (1916); *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

Proceeds of federal land grants, direct federal appropriations and private donations to the university, are trust funds, and are not subject to the constitutional requirement that money must be appropriated before it is paid out of the state treasury. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921); *State ex rel. Gallet v. Cleland*, 42 Idaho 803, 248 P. 831 (1926).

Claimant has no right to writ of mandate directing auditor to draw warrant unless it appears that there is money in treasury appropriated for that purpose. *Herrick v. Gallet*, 35 Idaho 13, 204 P. 477 (1922).

When an appropriation is made payable from a specific fund, it is not necessary to appropriate a specific sum. *McConnel v. Gallet*, 51 Idaho 386, 6 P.2d 143 (1931).

This section applies as of the time of incurring the expense or liability, rather than to the time the particular bill or claim is presented for payment. *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, *State ex rel.*

Williams v. Musgrave, 84 Idaho 77, 370 P.2d 778 (1962).

The state may not refund to the county the state's pro rata share of a court-ordered refund by the county of taxes collected wrongfully in previous years without a legislative appropriation. *State ex rel. Williams v. Adams*, 90 Idaho 195, 409 P.2d 415 (1965).

Purpose of Section.

Purpose of this section is to secure regularity, punctuality, and fidelity in disbursements of public money. *Blaine County Inv. Co. v. Gallet*, 35 Idaho 102, 204 P. 1066 (1922).

This provision was inserted in Constitution to prevent expenditure of people's money without their consent. *Blaine County Inv. Co. v. Gallet*, 35 Idaho 102, 204 P. 1066 (1922).

Transfer of Funds.

Although the Department of Health and Welfare was required to provide services to developmentally handicapped children, it was constitutionally prohibited from transferring funds into the Developmental Disabilities Program from nonmandatory programs, absent appropriation by the legislature. *George ex rel. George v. Donovan*, 114 Idaho 388, 757 P.2d 651 (1987).

Opinions of Attorney General. The constitutional restrictions of fiscal management do not appear to affect participation in the delay of drawdown procedures implemented under 5 U.S.C. § 301 and 31 C.F.R. Part 205. OAG 83-6.

Since appropriations are made on a fiscal year basis, it is not a violation of this section to make necessary correction in accounts within a fiscal year. By making corrections within a fiscal year, each account merely receives the correct amount of revenue for the fiscal year and the correct amount of revenue is available for the legislative appropriations made from each account. However, adjustments beyond the current fiscal year cannot be made without a legislative appropriation. OAG 89-8.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1684.

§ 14. Money — How drawn from county treasuries. — No money shall be drawn from the county treasuries except upon the warrant of a duly authorized officer, in such manner and form as shall be prescribed by the legislature.

Cited in: *Golden Gate Hwy. Dist. v. Canyon County*, 45 Idaho 406, 262 P. 1048 (1927).

ANALYSIS

Construction.
State funds.

Construction.

While this section does not appear to have been heretofore construed, what may be termed the companion section (art. 7, § 13) has been passed upon. *State ex rel. Gallett v. Cleland*, 42 Idaho 803, 248 P. 831 (1926).

State Funds.

This provision has been construed to relate to moneys in county treasury belonging to county and has no application to money belonging to state. *State ex rel. Gallett v. Cleland*, 42 Idaho 803, 248 P. 831 (1926).

Money in county treasury, obtained from licensing motor vehicles, may be paid over to

state without warrant as required by this section. *State ex rel. Gallett v. Cleland*, 42 Idaho 803, 248 P. 831 (1926).

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. II, pp. 1684, 1685.

§ 15. Legislature to provide system of county finance. — The legislature shall provide by law, such a system of county finance, as shall cause the business of the several counties to be conducted on a cash basis. It shall also provide that whenever any county shall have any warrants outstanding and unpaid, for the payment of which there are no funds in the county treasury, the county commissioners, in addition to other taxes provided by law, shall levy a special tax, not to exceed ten (10) mills on the dollar, of taxable property, as shown by the last preceding assessment, for the creation of a special fund for the redemption of said warrants; and after the levy of such special tax, all warrants issued before such levy, shall be paid exclusively out of said fund. All moneys in the county treasury at the end of each fiscal year, not needed for current expenses, shall be transferred to said redemption fund.

Cross ref. County budget law, §§ 31-1607 — 31-1613.

Cited in: *Independent Hwy. Dist. No. 2 v. Ada County*, 24 Idaho 416, 134 P. 542 (1913); *Reynolds Constr. Co. v. Twin Falls County*, 92 Idaho 61, 437 P.2d 14 (1968).

ANALYSIS

Construction.
Construction by constitutional convention.
Funding bonds.
Operation on cash basis.
Power and discretion of commissioners.
Purpose.
Section self-executing.
Warrant redemption fund.

Construction.

Courts must give practical effect to this provision. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Construction by Constitutional Convention.

Provision of this section that all moneys in the county treasury at the end of each fiscal year, not needed for current expenses, shall be transferred to the county warrant redemption fund, plainly contemplates only moneys actually belonging to the county. This meaning is apparent from a reading of the discussion of the section in the constitutional convention. *State ex rel. Gallett v. Cleland*, 42 Idaho 803, 248 P. 831 (1926).

Funding Bonds.

This section, in requiring business of coun-

ties to be conducted on a cash basis, does not preclude legislature from authorizing counties to issue bonds for purpose of taking up outstanding warrants and refunding bonds already issued. *Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894), overruled on other grounds, *Veatch v. City of Moscow*, 19 Idaho 313, 109 P. 722 (1910).

Warrant indebtedness may be extinguished by the issuance and sale of funding bonds in certain counties. *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915).

This section is not a grant of, but a limitation on, the powers of the legislature. There is nothing in the constitution prohibiting funding warrant indebtedness by exchange of bonds or warrants or by issuing and selling bonds and placing the proceeds in the warrant redemption fund. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

A statute authorizing counties to issue bonds for the funding of their warrants is constitutional. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Bonds funding county warrant indebtedness existing as of second Monday in January, 1933 are "general obligations" of the county for the payment of which an unlimited tax levy may be made. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Operation on Cash Basis.

Section 31-1605A which provides authorization for counties to operate on a cash basis does not violate this section nor Const., art. 7,

§ 16. V-1 Oil Co. v. State Tax Comm'n, 112 Idaho 508, 733 P.2d 729 (1987).

Power and Discretion of Commissioners.

Board of county commissioners has power to levy and collect taxes against all taxable property within county, including that within highway district, for payment of bonds, proceeds whereof have been used for construction of bridges within county and without boundaries of district. *Reinhart v. Canyon County*, 22 Idaho 348, 125 P. 791 (1912); *Nampa Hwy. Dist. v. Canyon County*, 30 Idaho 446, 165 P. 1126 (1917); *Golden Gate Hwy. Dist. v. Canyon County*, 45 Idaho 406, 262 P. 1048 (1927).

County commissioners derive their power to levy taxes solely from Constitution and statutes and can levy no tax that is not therein provided. *Oregon S.L.R.R. v. Gooding County*, 33 Idaho 452, 196 P. 196 (1921).

There is no authority under this section for county commissioners to levy tax for purpose of establishing warrant redemption fund unless there are unpaid county warrants issued prior to second Monday of April in year in which levy is made. *Oregon S.L.R.R. v. Gooding County*, 33 Idaho 452, 196 P. 196 (1921).

Determination of question whether moneys are needed for purposes of fund for which collected, or whether they shall be transferred to warrant redemption fund, is within discretion of county board of commissioners. *Laclede Hwy. Dist. v. Bonner County*, 33 Idaho 476, 196 P. 196 (1921).

Moneys collected under certain fund do not pass to warrant redemption fund by operation of law, but by resolution of board of county commissioners. *Laclede Hwy. Dist. v. Bonner County*, 33 Idaho 476, 196 P. 196 (1921).

Purpose.

Sole purpose of this article is to put business of county on cash basis. It requires moneys to be kept in fund for which they were levied so long as needed for current expenses chargeable to fund, to the end that such fund be kept on cash basis. Surplus, if any, over and above amount needed for current expenses, should be transferred to warrant redemption fund. *Laclede Hwy. Dist. v. Bonner County*, 33 Idaho 476, 196 P. 196 (1921).

Legislature is without authority to authorize or direct the transfer to warrant redemption fund of moneys out of any fund so long as needed in that fund to meet expenses chargeable thereto. *Laclede Hwy. Dist. v. Bonner County*, 33 Idaho 476, 196 P. 196 (1921).

Provisions of irrigation district law relative to levy of assessments and tolls for maintenance are designed to keep annual expenses on cash basis as is made compulsory with counties under this section. *Little v. Emmet Irrigation Dist.*, 45 Idaho 485, 263 P. 40, 56 A.L.R. 822 (1928).

The legislature is expressly charged by this section to provide a system of county finances as shall cause the business of the counties to be conducted on a cash basis by providing by law for a balanced budget and it may also provide for such safeguards as are reasonably necessary in accomplishing that object. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

The county budget law and this section are in complete harmony in providing that the business of the several counties be conducted on a balanced budget and on sound business principles on the same basis that any successful private business is conducted. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

Section Self-Executing.

The language of this section is self-executing. *Peavy v. McCombs*, 26 Idaho 143, 140 P. 965 (1914).

Warrant Redemption Fund.

Constitution has provided method or system of taxation to enable county finances to be kept on cash basis by requiring levy of warrant redemption tax upon taxable property of whole county for payment of outstanding county warrants, and also by requiring the transfer of all moneys in different funds in county treasury, at end of fiscal year, to warrant redemption fund. *Golden Gate Hwy. Dist. v. Canyon County*, 45 Idaho 406, 262 P. 1048 (1927).

This section in no way prohibits the legislature from providing what warrants may be redeemed from the warrant redemption fund so long as they shall be warrants issued before the warrant redemption levy is made. It contemplates that the warrant redemption fund be used exclusively for the redemption of outstanding warrants and not be converted into a fund for payment of current county expenses. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. II, pp. 1684, 1685, 1769.

§ 16. Legislature to pass necessary laws. — The legislature shall pass all laws necessary to carry out the provisions of this article.

Cited in: *Golden Gate Hwy. Dist. v. Canyon County*, 45 Idaho 406, 262 P. 1048 (1927).

ANALYSIS

Income taxation.
Operation of county on cash basis.

Income Taxation.

Income taxation by the state is constitutional. *State v. Staples*, 112 Idaho 105, 730 P.2d 1025 (Ct. App. 1986).

§ 17. Gasoline taxes and motor vehicle registration fees to be expended on highways. — On and after July 1, 1941 the proceeds from the imposition of any tax on gasoline and like motor vehicle fuels sold or used to propel motor vehicles upon the highways of this state and from any tax or fee for the registration of motor vehicles, in excess of the necessary costs of collection and administration and any refund or credits authorized by law, shall be used exclusively for the construction, repair, maintenance and traffic supervision of the public highways of this state and the payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purposes whatsoever.

Compiler's notes. This is a new section not found in the original constitution. It was proposed by S.L. 1939, H.J.R. No. 3, p. 672; ratified Nov. 5, 1940, and became effective Nov. 25, 1940.

ANALYSIS

Advertising state with highway funds.
Application of funds.
Appropriation of fees.
Competitive bidding.
Idaho Petroleum Clean Water Trust Fund.
Performance of duties.
Laws 1957, ch. 295.
Purchase of equipment.
Standing to bring suit.

Advertising State With Highway Funds.

Advertising the state of Idaho and performing other duties of the department of commerce and development do not come within the meaning of "administration" or "maintenance" of state highway system. *State ex rel. Moon v. Jonasson*, 78 Idaho 205, 299 P.2d 755 (1956).

Session Laws 1955, ch. 234, § 6 providing for a transfer of \$50,000 from the highway fund to the Idaho development and publicity fund for the purpose of advertising the highways and the state of Idaho is unconstitutional as a violation of this section requiring proceeds of gasoline and motor vehicle fuel taxes to be used exclusively for highway purposes. *State ex rel. Moon v. Jonasson*, 78 Idaho 205, 299 P.2d 755 (1956).

Operation of County on Cash Basis.

Section 31-1605A, which provides authorization for counties to operate on a cash basis, does not violate this section or Const., art. 7, § 15. *V-1 Oil Co. v. State Tax Comm'n*, 112 Idaho 508, 733 P.2d 729 (1987).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1691, 1773.

Application of Funds.

Where special funds or revenues are dedicated to a particular purpose, the same cannot be used for any other purpose, and any act of the legislature attempting to provide otherwise is unconstitutional. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

Laws 1959, ch. 83, evidencing the appropriation of the legislature from the highway fund for the uses and purposes therein set forth is constitutional and in nowise violative of this section of the Constitution. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

It is unconstitutional for the state by statute to attempt to compensate with revenue obtained from gasoline taxes and motor vehicle registration fees utilities forced to relocate their facilities located on public highways, since utilities acquire no permanent property right to the use of public highways, but a permissive use only. *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959).

The plain meaning of this section is that all moneys collected from the enumerated sources must be used for the designated purpose and may not be diverted therefrom; the only exception to that mandate is that the legislature may authorize the funds to also be used for refunds or credits or to defray costs of collection and administration. *Williams v. Swensen*, 93 Idaho 542, 467 P.2d 1 (1970).

Nowhere in the words or spirit of this section is the legislature prohibited from taking the course of action exemplified in former law, wherein legislature required that all

moneys collected in counties from licensing motor vehicles and from certain fines and penalties be forwarded to state treasurer for state highway fund, but did not provide for any portion of such moneys to be retained for costs of collection and administration. *Williams v. Swensen*, 93 Idaho 542, 467 P.2d 1 (1970).

Appropriation of Fees.

The creation and collection of per-gallon transfer fee assessed for engaging in the privilege of delivering petroleum products in state was not unconstitutional, although revenue raised from the imposition of the transfer fee must be appropriated by the Idaho Legislature for uses consistent with this section; as such, petroleum distributor was not entitled to refund of the transfer fees it paid. *V-1 Oil Co. v. Idaho Petro. Clean Water Trust Fund*, 128 Idaho 890, 920 P.2d 909, cert. denied, 519 U.S. 1009, 117 S. Ct. 514, 136 L. Ed. 2d 403 (1996).

Competitive Bidding.

General contractors association failed to show that either this section or Art. 8, § 3 of the Idaho Constitution gave them a protected legal interest to engage in competitive bidding to supply highway district's need for gravel. *Idaho Branch, Inc. v. Nampa Hwy. Dist. No. 1*, 123 Idaho 237, 846 P.2d 239 (Ct. App. 1993).

Idaho Petroleum Clean Water Trust Fund.

The per-gallon transfer fee assessed for engaging in the privilege of delivering petroleum products in state was not reasonably related to the benefits provided by the Idaho Petroleum Clean Water Trust Fund Act's (Trust Fund) insurance program and therefore was a tax; as such, the appropriation of the revenue raised from the transfer fee to the Trust Fund was unconstitutional since this section mandates that all revenue raised from any tax on gasoline, such as the transfer fee at issue, must go toward construction, repair, maintenance and traffic supervision of the public highways. *V-1 Oil Co. v. Idaho Petro. Clean Water Trust Fund*, 128 Idaho 890, 920 P.2d 909, cert. denied, 519 U.S. 1009, 117 S. Ct. 514, 136 L. Ed. 2d 403 (1996).

Court's decision that appropriation of the proceeds from the per-gallon transfer fee assessed for engaging in the privilege of delivering petroleum products in state could not be constitutionally applied to fund the Idaho Petroleum Clean Water Trust Fund was to be applied in a modified, prospective fashion: decision was to be applied to all pending actions at the date of Court's decision and to actions arising in future but was not to be applied retroactively. *V-1 Oil Co. v. Idaho Petro. Clean Water Trust Fund*, 128 Idaho

890, 920 P.2d 909, cert. denied, 519 U.S. 1009, 117 S. Ct. 514, 136 L. Ed. 2d 403 (1996).

The 1997 amendment to § 41-4909 that allocates 20% of the proceeds from the one cent per gallon "transfer fee" on all petroleum products delivered or stored in Idaho to the Petroleum Clean Water Trust Fund conforms to the requirements of this section of the Idaho Constitution. *V-1 Oil Co. v. Idaho State Tax Comm'n*, 134 Idaho 716, 9 P.3d 519 (2000).

Performance of Duties.

This section mentions no departments or divisions of government. It leaves to the legislature the designation of the departments of government to which may be delegated the performance of the functions and duties contemplated thereby. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

The legislature has the power to delegate to the department of law enforcement, as a department of government, the performance of certain duties and functions within the purview of this section and for the performance thereof, to make appropriations to said department from the highway fund. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

Laws 1957, ch. 295.

The provision in Session Laws 1957, ch. 295 providing for the reversion of the unused portion of an appropriation from the highway fund to the county treasurer of Lemhi County to be used for the construction and repair of Williams Creek Road, a county roadway violates this section of the Constitution. *Board of County Comm'rs v. Swensen*, 80 Idaho 198, 327 P.2d 361 (1958).

Purchase of Equipment.

General contractors association failed to show that the highway districts' purchase of equipment with dedicated highway funds was prohibited by this section. *Idaho Branch, Inc. v. Nampa Hwy. Dist. No. 1*, 123 Idaho 237, 846 P.2d 239 (Ct. App. 1993).

Standing to Bring Suit.

General contractors association did have standing to bring an action for a declaratory judgment where the "challenged conduct" was the action taken by highway districts ownership and operation of a gravel crusher, allegedly in violation of this section and Art. 8, § 3 of the Idaho Constitution. *Idaho Branch, Inc. v. Nampa Hwy. Dist. No. 1*, 123 Idaho 237, 846 P.2d 239 (Ct. App. 1993).

Opinions of Attorney General. If motor vehicle registration fees were the sole source of funding for the administration of the Department of Law Enforcement, such funds could not be used to administer programs unrelated to highway construction, repair, maintenance or traffic supervision; however,

the Department of Law Enforcement's administration is currently funded from both motor vehicle registration fees and from non-dedicated funds. If the legislative appropriations for administration of the Department of Law Enforcement allocate an amount of non-dedicated funds sufficient to administer programs unrelated to highway construction, repair, maintenance, or traffic supervision, such appropriations would probably not be held to violate this section. OAG 84-3.

Interest earnings upon funds dedicated to highway purposes by this section should be credited to the highway distribution account established by Idaho Code, § 40-701, and not

to the state general account. OAG 89-8.

Section 41-4908(7) which imposes a transfer fee of one cent per gallon on the delivery or storage of all petroleum products within the state, does not violate const., this section, which requires that the proceeds of any tax on gasoline and like motor vehicle fuels sold or used to propel motor vehicles upon the highways of this state be used for highway purposes; the "transfer fee" established in § 41-4908(7) is not a "tax on gasoline and like motor vehicle fuels sold or used to propel motor vehicles upon the highways of this state." OAG 90-2.

Article VIII

PUBLIC INDEBTEDNESS AND SUBSIDIES

SECTION.

1. Limitation on public indebtedness.
2. Loan of state's credit prohibited — Holding stock in corporation prohibited — Development of water power.
- 2A. Municipal bond bank authority.
3. Limitations on county and municipal indebtedness.

SECTION.

- 3A. Environmental pollution control revenue bonds — Election on issuance.
- 3B. Port district facilities and projects — Revenue bond financing.
- 3C. Hospitals and health services — Authorized activities and financing.
4. County, etc., not to loan or give its credit.
5. Special revenue financing.

§ 1. Limitation on public indebtedness. — The legislature shall not in any manner create any debt or debts, liability or liabilities, except in case of war, to repel an invasion, or suppress an insurrection, unless the same shall be authorized by law, for some single object or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest on such debt or liability as it falls due, and also for the payment and discharge of the principal of such debt or liability within twenty years of the time of the contracting thereof, and shall be irrevocable until the principal and interest thereon shall be paid and discharged. But no such law shall take effect until at a general election it shall have been submitted to the people, and shall have received a majority of all the votes cast for or against it at such election, and all moneys raised by the authority of such laws shall be applied only to specified objects therein stated or to the payment of the debt thereby created, and such law shall be published prior to the general election at which it is submitted to the people, in the same manner as amendments to this constitution are published. The legislature may at any time after the approval of such law, by the people, if no debts shall have been contracted in pursuance thereof, repeal the same.

This section shall not apply to liabilities incurred for ordinary operating expenses, nor shall it apply to debts or liabilities that are repaid by the end of the fiscal year. The debts or liabilities of independent public bodies corporate and politic created by law and which have no power to levy taxes or obligate the general fund of the state are not debts or liabilities of the state of Idaho. The provisions of this section shall not make illegal those

types of financial transactions that were legal on or before November 3, 1998.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 1. The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, exclusive of the debt of the territory at the date of its admission as a state, exceed the sum of one and one-half per centum upon the assessed value of the taxable property in the state, except in case of war, to repel an invasion or suppress insurrection, unless the same shall be authorized by law for some single object or work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability, as it falls due; and also for the payment and discharge of the principal of such debt or liability, within twenty years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people, and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by the authority of such law, shall be applied only to the specific object therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county, or city and county, if one be published therein, throughout the state, for three months next preceding the election at which it is submitted to the people. The legislature may, at any time after the approval of such law, by the people, if no debt shall have been contracted in pursuance thereof, repeal the same."

It was amended, as proposed by S.L. 1909, p. 447, H.J.R. No. 3, and ratified at the general election in November, 1910, to read as follows:

"The legislature shall [not] in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, exclusive of the debt of the territory at the date of its admission as a state, and exclusive of debts or liabilities incurred subsequent to January 1st, 1911, for the purpose of completing the construction and furnishing of the state capitol building at Boise, Idaho, exceed the sum of one and one-half per centum upon the assessed value of the taxable property in the state, except in case of war to repel an invasion or suppress insurrection, unless the same shall be authorized by law for some single object of work to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for payment of the interest of such debt or liability as it falls due

and also for the payment and discharge of the principal of such debt or liability, within twenty years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until at a general election it shall have been submitted to the people, and shall have received a majority of all the votes cast for and against it at such election; and all moneys raised by the authority of such laws, shall be applied only to specified objects therein stated, or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county or city and county, if one be published therein, throughout the state for three months next preceding the election at which it is submitted to the people. The legislature may at any time after the approval of such law, by the people, if no debts shall have been contracted in the pursuance thereof, repeal the same."

The amendment of 1909 was held to be valid and operative, it being the intention of legislature that the first line should read: "The legislature shall not in any manner create any debt," etc. *Fletcher v. Gifford*, 20 Idaho 18, 115 P. 824 (1911) (bracketed word "not" inserted above by compiler).

This section was again amended, as proposed by S.L. 1911, p. 787, S.J.R. No. 16, and ratified at the general election in November, 1912, to read as follows:

"§ 1. Limitation on public indebtedness. — The legislature shall not in any manner create any debt or debts, liability or liabilities, which shall singly or in the aggregate, exclusive of the debt of the territory at the date of its admission as a state, and exclusive of debts or liabilities incurred subsequent to January 1, 1911, for the purpose of completing the construction and furnishing of the state capitol at Boise, Idaho, and exclusive of debt or debts, liability or liabilities incurred by the eleventh session of the legislature of the state of Idaho, exceed in the aggregate the sum of two million dollars (\$2,000,000), except in case of war, to repel an invasion, or suppress an insurrection, unless the same shall be authorized by law, for some single object or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest on such debt or liability as it falls due, and also for the payment and discharge of the principal of such debt or liability within twenty (20) years of the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged. But no such law shall take

effect until at a general election it shall have been submitted to the people, and shall have received a majority of all the votes cast for or against it at such election, and all moneys raised by the authority of such laws shall be applied only to specified objects therein stated or to the payment of the debt thereby created, and such law shall be published in at least one newspaper in each county or city, and county, if one be published therein, throughout the state for three (3) months next preceding the election at which it is submitted to the people. The legislature may at any time after the approval of such law, by the people, if no debts shall have been contracted in pursuance thereof, repeal the same."

An amendment to this section which was proposed by S.J.R. No. 6 (Laws 1959, p. 659) was defeated at the general election in 1960.

This section was amended by S.J.R. No. 107 (S.L. 1998, p. 1363) and ratified at the general election on November 3, 1998, to read as it now appears.

Cross ref. See note to Art. 8, § 3 under heading "Health facilities"; Board of County Comm'rs v. Idaho Health Facilities Auth., 96 Idaho 498, 531 P.2d 588 (1974).

Cited in: Green v. State Bd. of Canvassers, 5 Idaho 130, 47 P. 259, 95 Am. St. R. 169 (1896); Gooding v. Proffitt, 11 Idaho 380, 83 P. 230 (1905); Fletcher v. Gifford, 20 Idaho 18, 115 P. 824 (1911); George ex rel. George v. Donovan, 114 Idaho 388, 757 P.2d 651 (1987).

ANALYSIS

Computation of indebtedness.
Construction in general.
Debt and liability defined.
Decisions prior to amendment.
Issuance of bonds.
Power of legislature.
Purpose of article.
Repayment.
State highways.
Water conservation bonds.

Computation of Indebtedness.

The date on which statute authorizing acquisition of toll bridges by the state was based and became effective is controlling with respect to the amount of state indebtedness then existing. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Construction in General.

This section must be read with art. 7, §§ 9 and 11 regarding taxation limitation and restriction on public indebtedness. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Prospective returns from motor fuel taxes are not so uncertain or speculative as to condemn a statute levying a tax thereon to provide funds for the payment of toll bridges to be acquired by the state, on the ground that

the credit of the state would be impaired. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Debt and Liability Defined.

Fact that the general appropriation bill, covering expenses of the state for the next two years, provides for expenditures in excess of the revenue provided for by the general tax levy, does not create a debt within the meaning of this section. *Stein v. Morrison*, 9 Idaho 426, 75 P. 246 (1904).

The words "debt" and "liability" as used in this section are not employed in a technical sense, but have special reference to the basic warrant and legislative authority on which a state contract must rest and on which alone a public debt must find its sanction in order to obligate the state to pay. *Lewis v. Brady*, 17 Idaho 251, 104 P. 900, 28 L.R.A. (n.s.) 149 (1909).

Appropriations from assessed, but not yet collected, revenues of the state, and issuance of treasury notes in evidence thereof as authorized by statute, is not the incurring of an indebtedness within the meaning of this section. *State ex rel. Black v. Eagleson*, 32 Idaho 276, 181 P. 934 (1919); *State ex rel. Hall v. Eagleson*, 32 Idaho 280, 181 P. 935 (1919).

Issuance and sale of treasury notes, in conformity with a statute authorizing their issuance and sale in anticipation of revenues to be raised from taxes already levied, do not incur an indebtedness within meaning of this section. *State ex rel. Hall v. Eagleson*, 32 Idaho 280, 181 P. 935 (1919).

Statute apportioning motor fuel tax fund among the several counties creates no debt against the state; it merely appropriates and directs the expenditure of funds collected. *Ada County v. Wright*, 60 Idaho 394, 92 P.2d 134 (1939).

If an obligation be incurred which is irrevocable and requires for payment levies beyond the legislative biennium, it is a debt within the meaning of this section, and not merely advances against annual levies within such biennium under art. 7, §§ 9 and 11. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

This provision does not prohibit the incurring of public indebtedness repayable otherwise than by ad valorem taxes. *Lyons v. Bottolfsen*, 61 Idaho 281, 101 P.2d 1 (1940).

Decisions Prior to Amendment.

Under this section, basis for computation by legislature in creating public indebtedness has reference to existing facts and conditions at time legislature acts. *Lewis v. Brady*, 17 Idaho 251, 104 P. 900, 28 L.R.A. (n.s.) 149 (1909).

Legislature in the passage of an act creating public indebtedness must be governed by the assessed value of taxable property of the state as the same has been ascertained and

then exists, and such legislation can not anticipate the future and leave ascertainment of the assessed valuation to the future acts of ministerial and executive officers. *Lewis v. Brady*, 17 Idaho 251, 104 P. 900, 28 L.R.A. (n.s.) 149 (1909).

Issuance of Bonds.

In creating bond issue, this section is not in conflict with statute directing state treasurer to appoint fiscal agent to assist in sale of bonds. *State ex rel. Davis v. Banks*, 33 Idaho 765, 198 P. 472 (1921).

Where the court found that the appropriations did not exceed the debt limit prescribed by this section, a writ of prohibition sought to prevent the issuance of state bonds was properly denied. *Holden, J., dissenting. Taylor v. Girard*, 54 Idaho 787, 36 P.2d 773 (1934).

Revenue bonds issued by a state water agency under the provisions of art. 15, § 7 are not limited by the bond requirements and limitations of this section. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Power of Legislature.

Power of legislature as to creation of indebtedness, expenditure of state funds, or making appropriations is plenary, except as limited by constitutional provisions. *State ex rel. Davis v. Banks*, 33 Idaho 765, 198 P. 472 (1921).

Purpose of Article.

The article of which this section is a part provides for the general subject of state indebtedness to be incurred for such objects as erection of public buildings, meeting of extraordinary expenses, such as may be incurred in case of war, etc., and does not apply to ordinary current expenses of the state which are provided for in article 7. *Stein v. Morrison*, 9 Idaho 426, 75 P. 246 (1904).

Repayment.

An indebtedness incurred under this section is, of course, not required to be paid within the fiscal year but may be, if exceeding the two million limit, extended to twenty years. If the limitations in this section apply to any indebtedness within the two million limit but beyond the biennium it contains no restriction as to how repayment is to be made, whether by ad valorem, excise tax or otherwise. *Lyons v. Bottolfson*, 61 Idaho 281, 101 P.2d 1 (1940).

Law providing that treasury notes issued for the purpose of purchasing toll-bridge property were to be retired by the levy of an increase of excise tax on gasoline did not require levies beyond the legislative biennium, nor make allowable advances against annual levies, but it created a liability which

did not exceed the constitutional debt limit on the date of the passage of the toll-bridge statute. *Lyons v. Bottolfson*, 61 Idaho 281, 101 P.2d 1 (1940).

State Highways.

Object or end sought to be accomplished is sufficiently indicated in statute providing for creation of fund to be used in connection with federal appropriation in construction of state highways. *State ex rel. Davis v. Banks*, 33 Idaho 765, 198 P. 472 (1921).

Water Conservation Bonds.

The power conferred on the state water conservation board to issue coupon bonds without limit as to amount and to run for 40 years can not be the exercise of a governmental power, as it violates this section; there is no debt limit and no provision for submission to electors or ways and means for payment of interest and principal. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

If an act intends to place the credit of the state morally, and, in some degree financially, back of an enterprise, and if even appropriation was merely a loan, then it is invalid as a loan of the state's credit. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Opinions of Attorney General. Except where the Constitution limits the authority of the legislature with respect to the sale of state property as with respect to endowment and trust property, the legislature may authorize the sale of state buildings and may place the proceeds thereof in the general fund. OAG 83-2.

The constitutional restrictions of fiscal management do not appear to affect participation in the delay of drawdown procedures implemented under 5 U.S.C. § 301 and 31 C.F.R. Part 205. OAG 83-6.

Collateral References. Discussion of this article in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, pp. 162, 561, 603; Vol. II, pp. 1464, 1542.

Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, p. 561; Vol. II, pp. 1492, 1541.

Presumptions and burden of proof as to violation of or compliance with public debt limitation. 16 A.L.R.2d 515.

§ 2. Loan of state's credit prohibited — Holding stock in corporation prohibited — Development of water power. — (1) The credit of the state shall not, in any manner, be given, or loaned to, or in aid of any individual, association, municipality or corporation; nor shall the state directly or indirectly, become a stockholder in any association or corporation, provided, that the state itself may control and promote the development of the unused water power within this state.

(2) Notwithstanding the provisions of subsection (1), there is hereby created the public school guarantee fund which shall consist of funds provided by law to guarantee the debt of school districts in accordance with law. The state may guarantee the debt of school districts and may guarantee debt incurred to refund the school district debt. Any debt guaranty, the school district debt guaranteed thereby, or any borrowing of the state undertaken to facilitate the payments of the state's obligation under any debt guaranty shall not be included as a debt of the state for the purposes of the limitation of Section 1 of Article VIII. The legislature may provide by law that reimbursement to the state shall be obtained from moneys which otherwise would be used for the support of the educational programs of the school district which incurred the debt with respect to which a payment under the state's guaranty pursuant to this section was made.

Compiler's notes. As originally adopted, this section provided as follows:

"The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association, municipality or corporation; nor shall the state directly or indirectly, become a stockholder in any association or corporation."

It was amended, as proposed by S.L. 1919, p. 622, H.J.R. No. 13, and ratified at the general election in November, 1920, to read as follows:

"§ 2. Loan of state's credit prohibited — Holding stock in corporation prohibited — Development of water power. — The credit of the state shall not, in any manner, be given, or loaned to, or in aid of any individual, association, municipality or corporation; nor shall the state directly or indirectly, become a stockholder in any association or corporation, provided, that the state itself may control and promote the development of the unused water power within this state."

This section was amended by S.J.R. No. 106 (S.L. 1998, p. 1362) and ratified at the general election on November 3, 1998, to read as it now appears.

Cross ref. See note to Const., Art. 8, § 3 under heading "Health facilities;" Board of County Comm'rs v. Idaho Health Facilities Auth., 96 Idaho 498, 531 P.2d 588 (1974).

Cited in: Atkinson v. Board of Comm'rs, 18 Idaho 282, 108 P. 1046, 28 L.R.A. (n.s.) 412 (1910); Jones v. Power County, 27 Idaho 656, 150 P. 35 (1915); School Dist. No. 8 v. Twin

Falls County Mut. Fire Ins. Co., 30 Idaho 400, 164 P. 1174 (1917); Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969); Idaho Water Resource Bd. v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976); Idaho Falls Consol. Hosps. v. Bingham County Bd. of County Comm'rs, 102 Idaho 838, 642 P.2d 553 (1982).

ANALYSIS

Advances on state business.

"Credit".

Educational purposes.

Gasoline taxes.

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Municipalities.

Public assistance law.

Public utilities.

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Voluntary and compulsory obligations.

Water conservation board.

Advances on State Business.

The revolving fund statute (§ 67-2019) does not give or loan the credit of the state in violation of this section. It merely advances state money to a state officer for use in official business; the money is not given to aid the officer as an individual but in furtherance of state business. Suppiger v. Enking, 60 Idaho 292, 91 P.2d 362 (1939).

The loaning of credit clause of Idaho Const., art. 8, § 2, may be reconciled with the amendment to Idaho Const., art. 9, § 11, precisely because it prohibits loaning of state's credit, and does not prohibit the loaning of state's funds. Engelking v. Investment Bd., 93 Idaho 217, 458 P.2d 213 (1969).

“Credit”.

The word “credit” implies the imposition of some new financial liability upon the state which in effect results in the creation of state debt for the benefit of private enterprises. *Nelson v. Marshall*, 94 Idaho 726, 497 P.2d 47 (1972).

Educational Purposes.

Session Laws 1955, ch. 277, appropriating the sum of \$100,000 to apply on Dormitory Revenue Bond Issue of \$375,000 issued by board of trustees of Northern Idaho College of Education in 1950 under provisions of Educational Bond Act, S.L. 1935 (1st E.S.), ch. 55, since college had been closed since 1951 due to failure of legislature to appropriate funds, was not unconstitutional on the ground that it was an attempt to loan the credit of the state for a private purpose, since it was designed and intended for a public purpose, to wit, payment for a college building in furtherance of educational objectives of the state. *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

The pledge of state sales tax monies pursuant to § 33-5303(2) was not in conflict with the proscription against giving the state’s credit as found in this section, because there is nothing in this section prohibiting a pledge of state sales tax proceeds in an amount exceeding state aid in support of educational programs. *State Endowment Fund Inv. Bd. v. Crane*, 135 Idaho 667, 23 P.3d 129 (2001).

Gasoline Taxes.

State apportioning motor fuel tax fund among several counties is not violative of this section as an attempt to loan the credit of the state to highways, cities and counties. *Ada County v. Wright*, 60 Idaho 394, 92 P.2d 134 (1939).

Irrigation Projects.

Sections 42-1754(b) and 42-1756(a), which authorize the water resource board to make loans to individuals to finance irrigation projects, do not violate this section. First, a loan of state funds is not a loan of state credit; second, a loan to effectuate a broad public purpose, in this instance the irrigation of arid land, is not “in the aid of any individual.” *Nelson v. Marshall*, 94 Idaho 726, 497 P.2d 47 (1972).

Since credit clause of Idaho Constitution, art. 8, § 2 does not prohibit loaning funds, the loans under §§ 42-1754 and 42-1756 did not offend the constitutional provision. *Nelson v. Marshall*, 94 Idaho 726, 497 P.2d 47 (1972).

Municipalities.

Law 1959, ch. 265, which authorizes municipality to issue bonds for acquisition of manufacturing, industrial or commercial enterprises, violates this section of the constitution. *Village of Moyie Springs v. Au-*

rora Mfg. Co., 82 Idaho 337, 353 P.2d 767 (1960).

Public Assistance Law.

The public assistance law does not violate this section as lending the credit of the state to an individual. *State ex rel. Nielson v. Lindstrom*, 68 Idaho 226, 191 P.2d 1009 (1948).

Public assistance law (§ 56-207) does not violate this section of Constitution prohibiting giving of aid by the state to an individual, since it is the function of the state to grant aid to the needy. *Newland v. Child*, 73 Idaho 530, 254 P.2d 1066 (1953).

Public Utilities.

It is unconstitutional for the state by statute to compensate with state funds utilities forced to relocate their facilities located on public highways, since utilities acquire no permanent property right to the use of public highways, but a permissive use only. *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959).

Purpose.

The Idaho Constitution is imbued with the spirit of economy, and, insofar as possible, it imposes upon political subdivisions of the state a pay-as-you-go system of finance. The rule is that, without express assent of qualified electors, municipal officers are not to incur debts for which they have not the funds to pay. Such policy entails a measure of crudity and inefficiency in local government, but doubtless the men who drafted the constitution, having in mind disastrous examples of optimism and extravagance on part of public officials, thought best to sacrifice a measure of efficiency for a degree of safety. The careful, thrifty citizen sometimes gets along with a crude instrumentality until he is able to purchase and pay for something better. And, likewise, under the Constitution, county officers must use the means they have for making fair and equitable assessments until they are able to pay for something more efficient, or obtain consent of those in whose interests they are supposed to act. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff’d*, 248 F. 401 (9th Cir. 1918).

Object and purpose of this provision is to maintain credit of the state and counties by keeping them upon a cash basis. *County of Ada v. Bullen Bridge Co.*, 5 Idaho 79, 47 P. 818, 36 L.R.A. 367 (1896); *Ball v. Bannock County*, 5 Idaho 602, 51 P. 454 (1897).

Voluntary and Compulsory Obligations.

This section applies equally to voluntary and compulsory obligations. *White v. Pioneer Bank & Trust Co.*, 50 Idaho 589, 298 P. 933

(1931), overruled on other grounds, *Independent Sch. Dist. No. 1 v. Diefendorf*, 57 Idaho 191, 64 P.2d 393 (1937).

Water Conservation Board.

The \$50,000 appropriation loan by the state to the water conservation board runs counter to, and violates, this section. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Opinions of Attorney General. The constitutional restrictions of fiscal management do not appear to affect participation in the delay of drawdown procedures implemented under 5 U.S.C. § 301 and 31 C.F.R. Part 205. OAG 83-6.

Subdivision (3)(b) of § 57-722, which authorizes investment in money market mutual funds whose assets are limited to obligations of the United States or any agency or instrumentality thereof, is constitutional, provided that the money market mutual fund unconditionally guarantees full repayment of principal and interest as required by Const. art. 9, § 11, and the state does not directly or indirectly become a stockholder in any association or corporation. OAG 85-4.

Allowing two or three top-level state em-

ployees to work for a private organization such as the United Way for several weeks under the "loaned executive program" while being paid by the state is a significant state expenditure of funds, and the private benefit to the United Way significantly outweighs the incidental public benefits; thus, allowing state personnel to work full time for the United Way to assist in its fundraising while also receiving wages and benefits from the state violates the public purpose doctrine. OAG 95-7.

Under certain circumstances, state agencies or institutions can share facilities and personnel with private charitable organizations or foundations; however, the sharing arrangement must accomplish a public purpose and must be directly related to the function of government, and these arrangements are most likely to withstand a judicial challenge if the foundation involved exists for the benefit of the state agency and performs activities which the state agency is authorized to conduct, and if there is sufficient state control, whether contractual or otherwise, to ensure that the activities of the charitable foundation continue to meet the public purpose requirement. OAG 95-7.

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, p. 584.

§ 2A. Municipal bond bank authority. — (1) Notwithstanding the provisions of subsection (1) of Section 2 of Article VIII, the legislature may enact laws authorizing the state to establish a bond bank authority to purchase the bonds, notes or other obligations of a municipality issued or undertaken for any purpose authorized by law and to lend money to a municipality with such loans to be secured by bonds, notes or other obligations of the municipality issued or undertaken as authorized by law. To enable the authority to obtain funds to purchase municipal bonds, notes or other obligations or to make loans to municipalities, the legislature may enact laws authorizing the bond bank authority to:

- (a) Issue revenue bonds, notes or other obligations payable from or secured by bonds, notes or other obligations of one or more municipalities;
- (b) Pledge or otherwise obligate, for and in the name and on behalf of the state as its agent and instrumentality, specific funds or revenues of the state, as a source of payment or security for bonds, notes or other obligations issued by the authority, with such priority over other uses of such funds or revenues as the authority shall determine, in accordance with law, to be necessary or appropriate;
- (c) Establish debt service reserve funds or other reserve funds;
- (d) Obtain private credit enhancement for bonds, notes or other obligations issued by the authority;
- (e) Establish a revolving loan program to purchase municipal bonds, notes or other obligations or to lend money to municipalities;

(f) Invest moneys held by the authority, as proceeds or to pay or secure bonds, notes or other obligations issued by the authority, in such securities or obligations as are described in the indenture, trust agreement or other instrument providing for the issuance of the bonds, notes or other obligations;

(g) Invest any moneys held by the authority, in excess of funds described in paragraph (f) of this subsection, in any securities or other obligations in which a trustee may invest as provided by law;

(h) Take any other actions and enter into such other contracts and agreements as it may determine to be necessary or appropriate to accomplish the purposes of a bond bank authority or this section.

(2) To provide for the sale of municipal bonds, notes or other obligations to the authority and for the issuance of municipal bonds, notes or other obligations for purchase by the authority or as security for loans from the authority, the legislature may enact laws authorizing a municipality, in addition to any other powers municipalities may have, and without regard to the restrictions or requirements that might otherwise apply under the laws of this state, but subject to the requirements of Section 3 of Article VIII, and any other limitations imposed upon municipalities by the Constitution of the State of Idaho, to:

(a) Issue bonds, notes or other obligations for sale to or as security for loans received from the authority, with such interest rate, maturity, redemption, security, remedies and other terms as the municipality may agree with the authority;

(b) Levy and collect property taxes, fees, rates, charges and other assessments to pay or secure the bonds, notes or other obligations issued by the municipality for sale to or as security for loans received from the authority;

(c) Pledge and assign to the authority or its designee property taxes, fees, rates, charges and other assessments, and rights to enforce the collection and application thereof, to pay or secure the bonds, notes or other obligations issued by the municipality for sale to or as security for loans received from the authority;

(d) Take any other actions and enter into such other contracts and agreements as it may determine with the authority to be necessary or appropriate to accomplish the purposes of a bond bank authority or this section.

(3) The provisions of Section 1 and subsection (1) of Section 2 of Article VIII shall not be construed as a limitation upon the authority granted by this section and any debt or liability of the state arising as a result of the exercise of powers authorized by this section shall not be deemed a debt of the state for purposes of Section 1 of Article VIII. The provisions of this section are supplemental to and shall not be construed as a repeal of or limitation upon any authority of a municipality under Section 3 or 4 of Article VIII, or any other authority lawfully exercisable by a municipality under the Constitution and laws of this state, including, among others, any authority to issue general obligation bonds, revenue bonds or tax anticipation notes or to enter into contracts for or undertake other financial obligations.

(4) For purposes of this section, “municipality” shall include any county, city, municipal corporation, school district, irrigation district, sewer district, water district, highway district or other special purpose district or political subdivision of the state established by law.

Compiler’s notes. The enactment of new 107 (S.L. 2000, p. 1664) and passed at the article VIII, § 2A was proposed by S.J.R. No. general election on November 7, 2000.

§ 3. Limitations on county and municipal indebtedness. — No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two thirds ($\frac{2}{3}$) of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty (30) years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: Provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city may own, purchase, construct, extend, or equip, within and without the corporate limits of such city, off street parking facilities, public recreation facilities, and air navigation facilities, and for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two thirds ($\frac{2}{3}$) of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such facilities as may be prescribed by law, and provided further, that any city or other political subdivision of the state may own, purchase, construct, extend, or equip, within and without the corporate limits of such city or political subdivision, water systems, sewage collection systems, water treatment plants, sewage treatment plants, and may rehabilitate existing electrical generating facilities, and for the purpose of paying the cost thereof, may, without regard to any limitation herein imposed, with the assent of a majority of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities, as may be prescribed by law; and provided further that any port district, for the purpose of carrying into effect all or any of the powers now or hereafter granted to port districts by the laws of this state, may contract indebtedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, such revenue bonds to be payable solely from all or such part of the revenues of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes, as the port commission thereof may determine, and such revenue bonds not to be in any manner or to any

extent a general obligation of the port district issuing the same, nor a charge upon the ad valorem tax revenue of such port district.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 3. No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state."

As amended by S.L. 1949, p. 598, H.J.R. No. 9, and ratified at the general election in 1950, this section provided as follows:

"§ 3. No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city or village may own, purchase, construct, extend, equip, within and without the corporate limits of such city or village, water systems and sewage collection systems, and water treatment plants and sewage treatment plants, and off street parking facilities, and, for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid

solely from revenue derived from rates and charges for the use of, and the service rendered by, such systems, plants, and facilities as may be prescribed by law."

As amended by S.L. 1963, p. 1149, H.J.R. No. 5, and ratified at the general election in 1964, this section provided as follows:

"§ 3. Limitations on county and municipal indebtedness. — No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city or village may own, purchase, construct, extend, equip, within and without the corporate limits of such city or village, water systems and sewage collection systems, and water treatment plants and sewage treatment plants, and off street parking facilities, and, for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such systems, plants, and facilities as may be prescribed by law; and provided further that any port district, for the purpose of carrying into effect all or any of the powers now or hereafter granted to port districts by the laws of this state, may contract indebtedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, such revenue bonds to be payable solely from all or such part of the revenues of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes, as the port commission thereof may determine, and such revenue bonds not to be in any manner or to any

extent a general obligation of the port district issuing the same, nor a charge upon the ad valorem tax revenue of such port district."

As amended by S.L. 2nd Ex. Sess. 1966, p. 66 and ratified at the general election in 1966, this section provided as follows:

"§ 3. Limitations on county and municipal indebtedness. — No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city or village may own, purchase, construct, extend, equip, within and without the corporate limits of such city or village, water systems and sewage collection systems, and water treatment plants and sewage treatment plants, and off street parking facilities and public recreation facilities, and, for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such systems, plants, and facilities as may be prescribed by law; and provided further that any port district, for the purpose of carrying into effect all or any of the powers now or hereafter granted to port districts by the laws of this state, may contract indebtedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, such revenue bonds to be payable solely from all or such part of the revenues of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes, as the port commission thereof may determine, and such revenue bonds not to be in any manner or to any extent a general obligation of the port district issuing the same nor a charge upon the ad valorem tax revenue of such port district."

As amended by S.L. 1967, p. 1577, H.J.R.

No. 7, and ratified at the general election in 1968, this section provided as follows:

"§ 3. Limitations on county and municipal indebtedness. — No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, no [nor] unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city or village may own, purchase, construct, extend, equip, within and without the corporate limits of such city or village, water systems and sewage collection systems, and water treatment plants and sewage treatment plants, and off street parking facilities, public recreation facilities, and air navigation facilities, and, for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such systems, plants, and facilities as may be prescribed by law; and provided further that any port district, for the purpose of carrying into effect all or any of the powers now or hereafter granted to port districts by the laws of this state, may contract indebtedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, such revenue bonds to be payable solely from all or such part of the revenue of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes, as the port commission thereof may determine, and such revenue bonds not to be in any manner or to any extent a general obligation of the port district issuing the same, nor a charge upon the ad valorem tax revenue of such port district."

As amended by S.L. 1972, p. 1251, H.J.R. No. 73 and ratified at the general election in 1972, this section provided as follows:

"§ 3. Limitations on county and mu-

municipal indebtedness. — No county, city, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state and provided further that any city may own, purchase, construct, extend, or equip, within and without the corporate limits of such city, off street parking facilities, public recreation facilities, and air navigation facilities, and, for the purpose of paying the cost thereof may, without regard to any limitation herein imposed, with the assent of two-thirds of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by, such facilities as may be prescribed by law, and provided further, that any city or other political subdivision of the state may own, purchase, construct, extend, or equip, within and without the corporate limits of such city or political subdivision, water systems, sewage collection systems, water treatment plants, and sewage treatment plants, and for the purpose of paying the cost thereof, may, without regard to any limitation herein imposed, with the assent of a majority of the qualified electors voting at an election to be held for that purpose, issue revenue bonds therefor, the principal and interest of which to be paid solely from revenue derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities, as may be prescribed by law; and provided further that any port district, for the purpose of carrying into effect all or any of the powers now or hereafter granted to port districts by the laws of this state, may contract indebtedness and issue revenue bonds evidencing such indebtedness, without the necessity of the voters of the port district authorizing the same, such revenue bonds to be payable solely from all or such part of the revenues of the port district derived from any source whatsoever excepting only those revenues derived from ad valorem taxes, as the

port commissioner thereof may determine, and such revenue bonds not to be in any manner or to any extent a general obligation of the port district issuing the same, nor a charge upon the ad valorem tax revenue of such port district."

It was amended as proposed by S.J.R. 109 (S.L. 1976, p. 1269) and ratified at the general election on November 2, 1976 to read as it now appears. ~

An amendment to this section which was proposed by S.J.R. No. 115 (S.L. 1978, p. 1029) was defeated at the general election on November 7, 1978.

Cited in: Dexter Horton Trust & Sav. Bank v. Clearwater County, 248 F. 401 (9th Cir. 1918); Green v. State Bd. of Canvassers, 5 Idaho 130, 47 P. 259, 95 Am. St. R. 169 (1896); Andrews v. Board of County Comm'rs, 7 Idaho 453, 63 P. 592 (1900); Gilbert v. Canyon County, 14 Idaho 437, 94 P. 1029 (1908); Howard v. Independent Sch. Dist. No. 1, 17 Idaho 537, 106 P. 692 (1910); Atkinson v. Board of Comm'rs, 18 Idaho 282, 108 P. 1046, 28 L.R.A. (n.s.) 412 (1910); Independent Hwy. Dist. No. 2 v. Ada County, 24 Idaho 416, 134 P. 542 (1913); Jones v. Power County, 27 Idaho 656, 150 P. 35 (1914); Libby v. Pelham, 30 Idaho 614, 166 P. 575 (1917); Boise Dev. Co. v. Boise City, 30 Idaho 675, 167 P. 1032 (1917); Stark v. McLaughlin, 45 Idaho 112, 261 P. 244 (1927); Bannock County v. Citizens' Bank & Trust Co., 53 Idaho 159, 22 P.2d 674 (1933); Lyons v. Bottolfsen, 61 Idaho 281, 101 P.2d 1 (1940); Reynolds Constr. Co. v. Twin Falls County, 92 Idaho 61, 437 P.2d 14 (1968); Idaho Water Resource Bd. v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976); Kerner v. Johnson, 99 Idaho 433, 583 P.2d 360 (1978); McNichols v. Public Employee Retirement Sys., 114 Idaho 247, 755 P.2d 1285 (1988); Idaho Falls Redevelopment Agency v. Countryman, 118 Idaho 43, 794 P.2d 632 (1990).

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Bond Elections.

This provision of the Constitution which requires assent to two-thirds of the qualified electors in the incurrence of a municipal debt, and prescribes no property qualifications as to such electors, is not infringed by provision of municipal charter which requires assent of two-thirds of the qualified electors who are taxpayers to the incurrence of such debt. *Wiggin v. City of Lewiston*, 8 Idaho 527, 69 P. 286 (1902).

Municipal obligations, such as for construction of sewers, required to be paid out of special assessments levied against property particularly benefited, are not an indebtedness or liability within meaning of this section, and may be incurred, when statute so provides, without submission of the question to popular vote. *McGilvery v. City of Lewiston*, 13 Idaho 338, 90 P. 348 (1907); *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912); *Elliott v. McCrea*, 23 Idaho 524, 130 P. 785 (1913).

Where streets are paved and assessments are made against abutting property according to the benefits, improvement district bonds may be issued by city upon the council passing proper ordinance authorizing the same without submitting question of issuing bonds to electors or taxpayers of either the improvement district or the city, but where cost and expenses are to be paid by city and bonds are to be issued for the purpose of raising revenue to pay the same, then such question must be submitted to electors and taxpayers of city and must be by them authorized by proper vote. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

In elections under this section, where purposes for which money is to be raised constitute distinct proposals, they must be separately stated in order that voter may cast his vote in favor of one and against the other. *Allen v. Doumecq Hwy. Dist.*, 33 Idaho 249, 192 P. 662 (1920).

Under this and similar statutory provision, board of county commissioners can not incur a valid indebtedness for purpose authorized by an election of the people, in excess of amount thereof authorized at such election; and no action lies against the county on a claim in excess of such amount. *Mittry v. Bonneville County*, 38 Idaho 306, 222 P. 292 (1923).

This section does not require plans or specifications as a prerequisite or a concomitant part of an action on a bond issue for municipal

improvements or construction of municipal water works. *Durand v. Cline*, 63 Idaho 304, 119 P.2d 891 (1941).

An ordinance calling an election to vote on whether bonds shall be issued to improve and construct an addition to municipal water works system and to provide "more adequate water supply," was sufficient to justify the city council, after the bonds had been voted, in letting a contract for the drilling of a well, since the quoted words clearly contemplated water in addition to that already available from existing wells. *Durand v. Cline*, 63 Idaho 304, 119 P.2d 891 (1941).

Portion of plan for reorganization of school districts which provided that the debt of the two districts as formerly organized, be assumed by the new school district, which resulted in making taxpayers of one of the old school districts proportionately liable for the bonded indebtedness of the other old school district, was invalid where the voters were not limited to those persons possessing the qualifications of voting at a bond election and the plan was not carried by the required two thirds majority required to approve a bonded indebtedness. In re Joint Class A Sch. Dist. No. 370, 77 Idaho 453, 295 P.2d 249 (1956).

Two-thirds affirmative vote requirement of this section and I. C. § 50-1026 as applied to issuance by city of general obligation bonds to finance airport terminal and municipal swimming pool, was not offensive to Equal Protection Clause, Fourteenth Amendment, U.S. Constitution, as violative of principle of one man, one vote. *Bogert v. Kinzer*, 93 Idaho 515, 465 P.2d 639 (1970), appeal dismissed, 403 U.S. 914, 91 S. Ct. 2224, 29 L. Ed. 2d 691 (1971).

The requirement relating to the collection of an annual tax to pay interest on the debt and a sinking fund to pay the principal is simply sound fiscal policy and does not relate to the primary constitutional mandate of electorate approval of substantial and far-reaching municipal indebtedness; a financing plan which provides for amortization of the indebtedness by some means other than assessment of taxes might be held to satisfy that part of this section which calls for an assessment, but it cannot fulfill the requirement of voter approval. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

It was clearly the intent of the framers of the constitutional amendments, and the electorate through their ratification, that approval of a municipality's qualified voters is necessary whether its indebtedness or liability is against the general fund of the city, and its tax revenues, or limited to a special fund of project-generated revenues. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983),

cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

This section requires a city to obtain only a simple "majority" voter approval where the indebtedness undertaken is only for the rehabilitation of existing facilities (a purpose more similar to the "ordinary and necessary expenses" exception), whereas if the indebtedness is for the construction of wholly new facilities (obviously a much more extensive undertaking), then the "two thirds (⅔)" majority approval within the general application of the article would apply. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

Fact that cities' payment obligations under nuclear power plant financing agreement would be satisfied out of utility revenues alone, and not out of tax assessment, did not exempt agreement from voter approval requirement of this section. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

Bond Not Required.

District court's decision to dismiss several citizens' declaratory action under I.R.C.P. 12(b)(6) for failure to post a bond was erroneous because two counts of the complaint were merely challenging the validity of a lease-purchase agreement with a bank; they were not challenging the election procedures or the ultimate vote approving a levy and did not require posting a bond. *Johnson v. Boundary Sch. Dist. #101*, 138 Idaho 331, 63 P.3d 457 (2003).

Competitive Bidding.

General contractors association failed to show that either this section or Art. 7, § 17 of the Idaho Constitution gave them a protected legal interest to engage in competitive bidding to supply highway district's need for gravel. *Idaho Branch, Inc. v. Nampa Hwy. Dist. No. 1*, 123 Idaho 237, 846 P.2d 239 (Ct. App. 1993).

Connection Fees.

A connection fee may be imposed under the police power or other statutory power and will be upheld by the courts if it is not unreasonable and not arbitrarily imposed. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Construction.

The word "liability," as used in this section, has its ordinary meaning, and signifies the state of being bound in law and justice to pay an indebtedness or discharge some obligation. *Boise Dev. Co. v. City of Boise*, 26 Idaho 347, 143 P. 531 (1914).

An obligation imposed by law is not within

the inhibition of this section. *Independent Sch. Dist. No. 12 v. Manning*, 32 Idaho 512, 185 P. 723 (1919).

This section does not merely declare that contract entered into in violation of its provisions shall be void, but extends such invalidity to any indebtedness or liability incurred contrary to its provisions. *Deer Creek Hwy. Dist. v. Doumecq Hwy. Dist.*, 37 Idaho 601, 218 P. 371 (1923).

This section should be construed in conjunction with art. 8, § 4 and art. 13, § 6. *Boise-Payette Lumber Co. v. Challis Independent Sch. Dist. No. 1*, 46 Idaho 403, 268 P. 26 (1928).

Use of word "purpose" is intended in broad and general sense as whether indebtedness should be incurred, but does not mean that vote should be had on each item of expenditure contemplated, but rather general "purpose" of borrowing money for general purpose contemplated. *King v. Independent Sch. Dist. No. 37*, 46 Idaho 800, 272 P. 507 (1928).

This section did not contemplate that general taxpayers should become liable for unpaid indebtedness of assessment district and they could not be made liable by a law converting the district debt into a general obligation without notice and a chance to be heard. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

Provision in drainage district law attempting to make district bonds general obligations of the district, impairs the obligation of the contract of the bondholders and is void. *Straus v. Ketchen*, 54 Idaho 56, 28 P.2d 824 (1933).

A county bond election, duly called and regularly held to provide a main and two receiving hospitals, each being different structures in different cities of the county, was for only one "purpose," thus complying with this section. *Hubbard v. Board of Comm'rs*, 68 Idaho 141, 190 P.2d 685 (1948).

Village was entitled to combine its water system and sewage system and issue water and sewer revenue bonds with a pledge of the net revenue of both as sole security even though water system presently existed and sewage system was nonexistent, since intention of legislature was to make it possible to establish and maintain any or all of such systems in any combination which would serve best interests of a municipality. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

Twenty year limitation on payment of bonds contained in this constitutional provision prior to its amendment in 1950 does not apply to revenue bonds issued pursuant to amendment since there is no such limitation on revenue bonds in amendment. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

Effect of Violation.

Contract void under this section cannot be enforced as either express or implied contract. *Gillette-Herzog Mfg. Co. v. Canyon County*, 85 F. 396 (C.C.D. Idaho 1898); *Deer Creek Hwy Dist. v. Doumecq Hwy. Dist.*, 37 Idaho 601, 218 P. 371 (1923).

Warrants issued in violation of this provision are void. *County of Ada v. Bullen Bridge Co.*, 5 Idaho 79, 47 P. 818, 36 L.R.A. 367 (1896).

Debt created in contravention of provisions of this section can not be changed into the form of a negotiable instrument and thus defeat the object of the constitution. *Dunbar v. Board of Comm'rs*, 5 Idaho 407, 49 P. 409 (1897).

Where extraordinary indebtedness is incurred by a county without complying with this section, act of the county in thereafter issuing bonds sufficient to cover such indebtedness and all other indebtedness of the county does not constitute a ratification of the unlawful indebtedness such as to render the same enforceable against county. *McNutt v. Lemhi County*, 12 Idaho 63, 84 P. 1054 (1906).

When a city enters into a contract by terms of which it becomes liable for a large expenditure of money, exceeding in that year the income and revenue provided for it for said year without fully complying with all the provisions of this section, such contract is void. *Boise Dev. Co. v. City of Boise*, 26 Idaho 347, 143 P. 531 (1914).

Contract by county commissioners with person not acting as assessor to cruise taxable timber lands at large expense and to make reports not having official or legal status is void under this section. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff'd*, 248 F. 401 (9th Cir. 1918).

Estoppel can not be invoked in aid of contract which is expressly prohibited by constitutional and statutory provisions. *Deer Creek Hwy. Dist. v. Doumecq Hwy. Dist.*, 37 Idaho 601, 218 P. 371 (1923).

Contracts made and indebtedness incurred in violation of this section being void, there can be no recovery against a city for money received from the sale of void bonds and applied to lawful purposes. Equity can not interpose to relieve anyone violating express constitutional prohibitions. *Village of Heyburn v. Security Sav. & Trust Co.*, 55 Idaho 732, 49 P.2d 258 (1935).

Health Facilities.

Since the only funds obligated by the Health Facilities Act (§§ 39-1441 — 39-1460) to satisfy payments due on bonds and notes issued thereunder are the rates, rents and fee charges for the use of and for the services furnished by each facility, neither the state

nor any other governmental unit nor any state created agency has been obligated to meet the obligations of the bonds and notes issued by the Health Facilities Authority and thus the Act does not violate the provisions of this article. *Board of County Comm'rs v. Idaho Health Facilities Auth.*, 96 Idaho 498, 531 P.2d 588 (1974).

Housing Authority Law.

The Housing Authority Law contained in § 50-4401 et seq. (now § 50-1901 et seq.) is not in contravention of this provision as constituting the authority a "county," "city," "town," "township," "board of education," "school district" or other subdivision of the state. *Lloyd v. Twin Falls Hous. Auth.*, 62 Idaho 592, 113 P.2d 1102 (1941).

Indebtedness not Prohibited.

Provisions of this section apply only where debt is contracted for an extraordinary expense in excess of the revenue provided for the year; it does not prohibit purchase of real estate for courthouse, where cost will not create an indebtedness in excess of the current revenue after deducting indebtedness incurred by the county up to time of the purchase. *Ball v. Bannock County*, 5 Idaho 602, 51 P. 454 (1897).

Provisions of this section authorize the issuance of municipal bonds to take up outstanding indebtedness of city incurred for the current pay of officers and the ordinary expenses of city. *Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

Issuance of refunding bonds is not the creation of a new indebtedness within the meaning of this section, when it does not increase indebtedness or liability of municipality. *Veatch v. City of Moscow*, 18 Idaho 313, 109 P. 722, 21 Ann. Cas. 1332 (1910); *Sebern v. Cobb*, 41 Idaho 386, 238 P. 1023 (1925).

City may anticipate both income and revenue provided for it for such year, and incur debts or liabilities against city which can be met and discharged out of aggregate income and revenue for that year, but city has no right to anticipate, set aside, and hypothecate either the income or revenue of city, or any part thereof, for a special purpose, for a period of twenty years in advance. *Feil v. Coeur d'Alene*, 23 Idaho 32, 129 P. 643, 43 L.R.A. (n.s.) 1095 (1912).

Where city council of a municipality enacts an annual appropriation bill, and therein provides for public improvements, and levy is made for purpose of raising a general fund for the fiscal year, and such levy, together with the other revenues, such as fines, taxes, and licenses provided by law, will produce a sum sufficient to cover all sums which are provided for in the annual appropriation bill, including improvements, and such appropriation was intended by council to be for the purpose of

making certain improvements in the paving of cross-sections of streets and other improvements, this court will not hold ordinance of intention and ordinance creating improvement district and making of assessments void. *McEwen v. City of Coeur d'Alene*, 23 Idaho 746, 132 P. 308 (1913).

Where uncertain and contingent claims for alleged damages to property of corporation against city are made a part of the consideration of a contract entered into between them, and said claims have never been liquidated, settled, or reduced to a definite fixed amount of indebtedness against said city before the date of the contract, by a judgment or decree of court, arbitration, compromise, or in any manner whatever, then if these sums are liquidated, settled and fixed as a definite amount of indebtedness against the city for the first time by the contract itself, this constitutes a new debt. *Boise Dev. Co. v. City of Boise*, 26 Idaho 347, 143 P. 531 (1914).

Where no negligence was pleaded or proved, except in that properties liable for assessment under special assessment warrants were not in all instances valuable enough to meet proportionate share of liability, there was no violation under this section. *Hughes v. Village of Wendell*, 47 Idaho 370, 275 P. 1116 (1929).

Drainage district bonds are limited obligations and not general obligations of the district issued in violation of this section as excess obligations. *Straus v. Ketchen*, 54 Idaho 56, 28 P.2d 824 (1933).

Refunding bonds issued by the board of directors of an irrigation district under authority of S.L. 1935, ch. 39 (§ 43-610), which authorized extension of the due date of such bonds for 40 years were not void under the provisions of this section. *Marsing v. Gem Irrigation Dist.*, 56 Idaho 29, 48 P.2d 1099 (1935).

The issuance of refunding bonds is not the incurring of any indebtedness or liability exceeding the current year's revenue within the purview of this section. *Marsing v. Gem Irrigation Dist.*, 56 Idaho 29, 48 P.2d 1099 (1935).

A contract for the purchase of parking meters by a municipality, purchase-price of which is to be paid from income arising from operation of the meters, does not constitute a "debt" or "liability" against the municipality within the interdiction of this section. *Foster's Inc. v. Boise City*, 63 Idaho 201, 118 P.2d 721 (1941).

A village is entitled to acquire land without the village for the purpose of constructing a sewage disposal and treatment plant. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

Contract of irrigation district to furnish "seepage and waste" waters to property owners outside district did not violate constitu-

tional provision prohibiting a municipality from incurring an indebtedness or liability exceeding income and revenue of municipality, since irrigation district is not a municipality, and furthermore expense of drainage operations is within proviso excluding "ordinary and necessary expenses." *Jensen v. Boise-Kuna Irrigation Dist.*, 75 Idaho 133, 269 P.2d 755 (1954).

Sections 33-2122 to 33-2141 authorizing the dormitory housing commission to issue bonds and other obligations without the approval of the voters are constitutional under this section. *Wood v. Boise Junior College Dormitory Hous. Comm'n*, 81 Idaho 379, 342 P.2d 700 (1959).

Irrigation Districts.

This section does not apply to irrigation districts which derive funds from benefit assessments as such assessments are not taxes. *Barker v. Wagner*, 96 Idaho 214, 526 P.2d 174 (1974).

Limitation on Power.

This section is a limitation upon power of legislature in that it can not authorize a municipality to incur indebtedness in violation thereof. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

This section not only prohibits incurring any indebtedness, but it also prohibits incurring any liability "in any manner or for any purpose," exceeding the yearly income and revenue. *Feil v. Coeur d'Alene*, 23 Idaho 32, 129 P. 643, 43 L.R.A. (n.s.) 1095 (1912); *Miller v. City of Buhl*, 48 Idaho 668, 284 P. 843, 72 A.L.R. 682 (1930).

Taxpayer of a school district may sue in equity to prevent issuance of school bonds in violation of this section, even though an election contest is involved, where there is no other available remedy to prevent such violation. *Ashley v. Richard*, 32 Idaho 551, 185 P. 1076 (1919).

Common school district may incur indebtedness during any year in amount which does not exceed its revenue and income for that year. *Boise City Nat'l Bank v. Independent Sch. Dist. No. 40*, 33 Idaho 26, 189 P. 47 (1920).

This section is the only limitation on the power of the legislature to organize cities and confer powers on them. In making local improvements cities must conform to the laws authorizing them. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Where a bond issue of \$300,000 was voted for the purpose of paying the costs and expenses of acquiring by purchase or construction a light and power plant and distributing system, a plan which called for the expenditure of \$337,580 was void. *Washington Water Power Co. v. City of Coeur d'Alene*, 9 F. Supp.

263 (D. Idaho 1934), aff'd, 25 F. Supp. 795 (D. Idaho 1938).

The words "indebtedness or liability" as employed in this section, are meant to cover all character of debts and obligations for which a city may become bound. *Washington Water Power Co. v. City of Coeur d'Alene*, 9 F. Supp. 263 (D. Idaho 1934).

Necessity of Expenditure.

Expenditures made in excess of the revenue of any current year must not only be for ordinary expenses, such as are usual to maintenance of the county government, conduct of necessary business, and protection of its property, but there must exist a necessity for making the expenditure during such year. *Dunbar v. Board of Comm'rs*, 5 Idaho 407, 49 P. 409 (1897).

Cost of construction of bridge is not ordinary and necessary expense, and effort to incur indebtedness by agreement between two townships is in contravention of this section. *Allen v. Doumeq Hwy. Dist.*, 33 Idaho 249, 192 P. 662 (1920).

This section does not forbid contract by county commissioners, employing attorneys on contingent fee, to collect money already paid over as taxes but held on deposit in several insolvent banks. *Barnard v. Young*, 43 Idaho 382, 251 P. 1054 (1926).

A statute authorizing school trustees to enter into a contract to combine for educational purposes with another school district is not unconstitutional under this section. *Independent Sch. Dist. No. 6 v. Common Sch. Dist. No. 38*, 64 Idaho 303, 131 P.2d 786 (1942).

Ordinary and Necessary Expenses.

An expense is ordinary if it is in an ordinary class; if in the ordinary course of transaction of municipal business or the maintenance of municipal property it may and is likely to become necessary. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), aff'd, 248 F. 401 (9th Cir. 1918); *Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

An expense is not necessarily extraordinary because necessity therefor does not arise frequently and at regular intervals. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), aff'd, 248 F. 401 (9th Cir. 1918).

If by law a specific duty is imposed and mode of performance is prescribed, so that no discretion is left with officer, the expense necessarily incurred in discharging duty is a necessary expense. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), aff'd, 248 F. 401 (9th Cir. 1918).

Ordinary and necessary expenses may properly include any expenditure rendered necessary by casualty or accident which has

impaired or injured municipal property that is necessary for the protection of city against fires, or for the health and welfare of city. *Hickey v. City of Nampa*, 22 Idaho 41, 124 P. 280 (1912).

Indebtedness contracted by city for work on its streets is an ordinary and necessary expense authorized by general law, and is not within constitutional inhibitions. *Thomas v. Glindeman*, 33 Idaho 394, 195 P. 92 (1921).

Lease of equipment requiring payments in future years for services needed in those years creates a present indebtedness within the meaning of this section. *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931).

A statute authorizing the issuance of county emergency warrants to meet authorized ordinary and necessary county expenses is not invalid. *Lloyd Corp. v. Bannock County*, 53 Idaho 478, 25 P.2d 217 (1933).

Warrant redemption fund can not be used to pay "necessary and ordinary expenses" of county government and the statute making officials liable for allowing claims to be paid from proper fund, in excess of levy made for that fund, is valid and is not in conflict with this section. *Garrity v. Board of County Comm'rs*, 54 Idaho 342, 34 P.2d 949 (1934).

Salary of common school district teachers is an "ordinary and necessary expense" authorized by the general laws of the state and therefore exempt from the general provisions of this section. *Corum v. Common Sch. Dist.*, 55 Idaho 725, 47 P.2d 889 (1935).

The cost of employing teachers by the trustees is "an ordinary and necessary expense" of the school district authorized by general laws of the state and is therefore exempt from the provisions of this section. By *Budge, J.*, dissenting. *Copenhaver v. Common Sch. Dist.*, 56 Idaho 182, 52 P.2d 129 (1935).

Contributions of the city to a police pension fund are necessary and ordinary expenses within the exception of this section. *Hanson v. City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968).

Where county entered into contract with builder for construction of race track facilities with a lease back arrangement to the county, it was error for the trial court to find that such a contract was authorized under §§ 31-807, 31-822 and 31-1001 and that such rent under the lease constituted an ordinary and necessary expense and as such was exempted by art. 8, § 3 of the Constitution. *Swenson v. Buildings, Inc.*, 93 Idaho 466, 463 P.2d 932 (1970).

The repair, maintenance and construction of airports are not inherently "ordinary and necessary expenses" falling within the proviso clause of this section. *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

Where the city had maintained an airport facility for the benefit of the traveling public

for more than 20 years and found it inadequate to serve the public, the court correctly concluded that rentals on a new facility designed to fulfill the needs of the city and the traveling public were "ordinary and necessary" expenses within the proviso clause of this section. *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970).

Agreement between cities and power company by which company agreed to try to arrange financing, obtain permits and issue bonds for nuclear power plants while city agreed to pay costs, including debt service on bonds, regardless of whether company failed to secure financing or complete the projects, did not come within ordinary and necessary proviso of this section and consequently was void as to cities who acted ultra vires by obligating their residents without an election and without compliance with the Constitution. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

A municipality may accumulate collected revenues from rates, charges or fees to fund the cost of replacement of system components in its public works projects which are ordinary and necessary. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Where the proceeds of the connection fee for water and sewer service are dedicated to the water and sewer systems, those funds are kept in a separate, segregated account and are not used for general fund purposes and, further, only users of those services are charged and those fees are not utilized for general fund or for future expansion of the water and sewer system because the funds collected from connection fees by the city are specifically allocated in accordance with the Idaho Revenue Bond Act, the fees are not collected for general revenue raising purposes and are, therefore, not taxes; under these circumstances a municipality may collect fees, rates or charges pursuant to the power granted in the Idaho Revenue Bond Act to pay for maintenance, depreciation and replacement of system components. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Wages paid for a maintenance electrician to perform continuing work for a school district falls under the ordinary and necessary expenditures exception. Thus, the annual limitation on contracts of this section did not apply to a school district contract with a maintenance electrician for more than one year. *Ray v. Nampa Sch. Dist.*, 120 Idaho 117, 814 P.2d 17 (1991).

Prohibited Indebtedness.

Building of a bridge and payment of scalp buildings are extraordinary expenses. *Gillette-Herzog Mfg. Co. v. Canyon County*, 85 F. 396 (C.C.D. Idaho 1898); *Dunbar v. Board of*

Comm'rs, 5 Idaho 407, 49 P. 409 (1897).

Plan for financing proposed city light plant which resulted in incurring an indebtedness or liability above that limited was enjoined for violation of this section. *Washington Water Power Co. v. City of Coeur d'Alene*, 9 F. Supp. 263 (D. Idaho 1934).

Municipal indebtedness incurred during a given fiscal year can not be paid out of the income or revenue of a future year, unless such revenue is especially raised for payment of such indebtedness. *Theiss v. Hunter*, 4 Idaho 788, 45 P. 2 (1896).

Construction of a bridge involving expenditure equal to more than half of the revenue of a county for the year is an extraordinary expense. *County of Ada v. Bullen Bridge Co.*, 5 Idaho 79, 47 P. 818, 36 L.R.A. 367 (1896).

Issuance of county warrants in excess of county's revenue for construction of a wagon road, is unauthorized except by a compliance with this section. *McNutt v. Lemhi County*, 12 Idaho 63, 84 P. 1054 (1906).

City cannot evade provisions of the statutes, limiting bonded indebtedness of fifteen per cent of the real estate valuation for the preceding year, by voting bonds for partial payment on a contract, thus making no legal provisions for balance due upon said contract. *Woodward v. City of Grangeville*, 13 Idaho 652, 92 P. 840 (1907).

Assumption of liability of mutual insurance company by school district is contrary to provisions of this section. *School Dist. No. 8 v. Twin Falls County Mut. Fire Ins. Co.*, 30 Idaho 400, 164 P. 1174 (1917).

Contract for construction of addition to schoolhouse and furniture to be paid by attempted levy of trustees is void under Constitution which forbids school districts from incurring indebtedness in excess of income provided. *Petrie v. Common Sch. Dist. No. 5*, 44 Idaho 92, 255 P. 318 (1927).

City can not pledge its revenues from any source whatever without creating an indebtedness subject to this constitutional restriction. *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931).

This section can not be circumvented by incurring an excessive indebtedness and making it payable on the instalment plan. Applied to purchase of street sprinkler. *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931).

An agreement under which a municipality was required to make payments for several years for the use of a street sprinkler is invalid as creating an excessive liability. *Williams v. City of Emmett*, 51 Idaho 500, 6 P.2d 475 (1931).

Statutes and ordinances providing for a municipality to acquire a public utility, without any provision for the collection of an annual tax for a sinking fund and retirement

to pay therefor, is unconstitutional. *Straughan v. City of Coeur D'Alene*, 53 Idaho 494, 24 P.2d 321 (1933).

A corporation making a loan of money to a city to enable it to build a hospital on land owned by city (which loan was unconstitutional in that it exceeded the city's revenues for the year made, also that it was done without the assent of two-thirds of the electors) was not entitled to a lien upon such hospital as security for its loan under the principle of unjust enrichment where no offer to pay the city the reasonable value of the land was made. *General Hosp. v. City of Grangeville*, 69 Idaho 6, 201 P.2d 750 (1949).

Where a city planned to construct a hospital with money loaned to it for that purpose, thereby creating and contracting a debt in excess of the revenue provided by the city for the year in which it is attempted to contract the debt, without the assent of two-thirds of the qualified electors of the city, such debt was a contract especially forbidden by law and unconstitutional, even though an agreement had been made to pay the debt out of proceeds of the operation of the hospital. *General Hosp. v. City of Grangeville*, 69 Idaho 6, 201 P.2d 750 (1949).

Provision in ordinance that village is to pay from its general fund for water and services rendered to it by the water and sewer systems does not violate this section as amended in 1950 since no debt was created as there was no agreement by the village to use any amount of water or service, the only obligation it assumed being to pay a reasonable rate for any service it received. *Schmidt v. Village of Kimberly*, 74 Idaho 48, 256 P.2d 515 (1953).

The creation of the cooperative, its contracts for the purchase of gas and for the sale of its bonds to raise funds for the construction, operation and maintenance of a gas distribution system, and the ordinance of the city of Idaho Falls granting an exclusive franchise for thirty years to the cooperative with the contract provided for by such ordinance are all parts of a plan and design devised to enable the city of Idaho Falls to evade and circumvent the limitations and prohibitions of the constitution and statutes, and to exercise powers not granted to a municipality. *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956).

Laws 1959, ch. 265 which authorizes municipality to issue bonds for acquisition of manufacturing, industrial or commercial enterprises violates this section of the Constitution. *Village of Moyie Springs v. Aurora Mfg. Co.*, 82 Idaho 337, 353 P.2d 767 (1960).

The 1959 amendment authorizing a municipality to incur indebtedness and liabilities in excess of its current annual income and revenue for certain specified purposes does not include among such purposes any commercial

or industrial enterprise of a private character. *Village of Moyie Springs v. Aurora Mfg. Co.*, 82 Idaho 337, 353 P.2d 767 (1960).

The proprietary powers of municipal corporations in this state are limited to functions and purposes which are municipal and public in character as distinguished from those which are private in character and engaged in for profit; an incidental or indirect benefit to the public cannot transform a private industrial enterprise into a public one or imbue it with a public purpose. *Village of Moyie Springs v. Aurora Mfg. Co.*, 82 Idaho 337, 353 P.2d 767 (1960).

Indemnity clause in contract between county and appraiser, which clause relieved appraiser of liability in connection with revaluation of county real property, was not void as against public policy nor did it violate this section prohibiting creation of an unlimited liability on the county without voter approval. *Coeur D'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

There is no statutory authorization for the purchase of "project capability" where such purchase comprehends the payment of long-term indebtedness for which no power may be supplied, and for which no ownership interest is acquired; the municipality is neither acquiring, owning, maintaining, or operating a plant, nor purchasing electrical power but is underwriting another entity's indebtedness in return for merely the possibility of electricity. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

Provision for Sinking Fund.

Section 31-2208 (repealed), which, in providing for the funding of county indebtedness, requires commissioners to levy a sufficient tax to pay interest on funding bonds, and, at least one year before bonds become due, to levy a sufficient additional sum to pay same, authorizes adequate provisions for paying interest on bonds and for the creation of a sinking fund for their redemption, to comply sufficiently with this section. *Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894), overruled on other grounds, *Veatch v. City of Moscow*, 18 Idaho 313, 109 P. 722 (1910).

Where city council provided by ordinance for levy of an annual tax for payment of all interest to accrue on funding bonds about to be issued, and also by such ordinance provided for levy of an annual tax after the year 1909 to constitute a sinking fund for payment of principal of such bonds, provisions of this section are complied with, and bonds issued under such ordinance are valid. *City of Boise City v. Union Bank & Trust Co.*, 7 Idaho 342, 63 P. 107 (1900).

Issuance of refunding bonds does not generally create new indebtedness within meaning of this provision. *Sebern v. Cobb*, 41 Idaho 386, 238 P. 1023 (1925).

Provisions Mandatory.

Authority of boards of county commissioners in creating debts is limited by the Constitution and statutes of the state, and must be exercised within those limits, and at least with substantial compliance with the mode prescribed; provisions of the Constitution are mandatory and must be complied with. *Dunbar v. Board of Comm'rs*, 5 Idaho 407, 49 P. 409 (1897).

This provision is mandatory. *Marsing v. Gem Irrigation Dist.*, 56 Idaho 29, 48 P.2d 1099 (1935).

Qualifying liability.

Liability incurred by city through defalcation of city clerk, though it exceed the revenues for the year, is not within this provision as it was not a liability incurred by any voluntarily act of the municipality. *Cruzen v. Boise City*, 58 Idaho 406, 74 P.2d 1037 (1937).

Redevelopment Agencies.

Article 8, § 3 of the Idaho Constitution is not applicable to the Boise Redevelopment Agency, created pursuant to the Idaho Urban Renewal Law, as the alter ego of the city of Boise, even though the city participates in the agency's creation and in the selection and removal of its commissioners, since the agency is an entity of legislative creation, its powers and duties were established by the legislature, and its powers and operations are not controlled by the city. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Since the Boise Redevelopment Agency has no powers of taxation and no power to encumber any of the resources of the city of Boise, the provisions of the Idaho Constitution, art. 8, § 3 are not applicable to the agency. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

The Boise Redevelopment Agency is not a subdivision of the state within the meaning of Idaho Constitution, Art. 8, §§ 3 or 4. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Required and Mandated Expenditures.

Contracts between county and appraiser for revaluation of county real property for tax purposes were not void as violative of this section which prohibits creation of unlimited county liability without voter approval; the expenditures at issue here were not only ordinary and necessary and authorized by the general laws of the state, but were required and mandated. *Coeur D'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*,

104 Idaho 590, 661 P.2d 756 (1983).

School District Annexation.

Acts 1939, ch. 92, a special law providing for annexation of territory to Independent School District No. 1 of Nez Perce County does not violate this section despite language of ch. 92 that annexed territory assumes all obligations of district. This is so, because court construes the act to impose only current obligations upon annexed area. *Common Sch. Dist. No. 2 v. District No. 1*, 71 Idaho 192, 227 P.2d 947 (1951).

Special Fund.

The special fund doctrine is normally applied in situations where the city's indebtedness is for the purpose of building or buying revenue-producing property, and only the revenue produced from that particular property is used to repay the indebtedness. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

Where cities entered into agreement with power company for construction of two nuclear power plants, under which agreement cities were to pay costs of projects, including debt service on bonds, regardless of whether company was able to secure financing or project was ever completed, such indebtedness did not qualify as a special fund exception to this section since the cities' obligation to pay off bonds created no revenue-producing property and since the cities received no electrical power for their monthly payments to the company and must raise their rate charges on power already purchased to create a fund out of which to pay the company. *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870, 105 S. Ct. 219, 83 L. Ed. 2d 149 (1984).

Standing to Bring Suit.

General contractors association did have standing to bring an action for a declaratory judgment where the "challenged conduct" was the action taken by highway districts ownership and operation of a gravel crusher, allegedly in violation of this section and Art. 7, § 17 of the Idaho Constitution. *Idaho Branch, Inc. v. Nampa Hwy. Dist. No. 1*, 123 Idaho 237, 846 P.2d 239 (Ct. App. 1993).

State University.

Statute authorizing the board of regents of the University of Idaho to issue bonds to be amortized over a period of 30 years from revenues accruing from the operation of a proposed infirmary is valid. Had the framers intended this section to include the regents of the University of Idaho this section would have named them in its enumeration. *State ex rel. Miller v. State Bd. of Educ.*, 56 Idaho 210, 52 P.2d 141 (1935).

Voluntary Indebtedness.

Voluntary indebtedness is one in which a county is at liberty to evade or postpone until means are provided for payment of the expense incident thereto; while involuntary indebtedness is a liability imposed upon a county by law and which it is not privileged to evade or postpone. *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 235 F. 743 (D. Idaho 1916), *aff'd*, 248 F. 401 (9th Cir. 1918).

Water and Sewer Systems.

Where city based connection fees charged users of water and sewer system on formula termed "equity buy-in" and city annually was required to revalue the fees pursuant to the formula and all revenue from the fees was placed in a separate account and used only for replacement for existing facilities and equipment, no moneys were placed in the general operating funds of the city and none was used for expansion or improvement of the existing system, it was not necessary that a municipality have an election such as prescribed in this section prior to changing the rates, fees or charges imposed in establishing the cost of public works services such as sewer or water connection fees. *Loomis v. City of Hailey*, 119 Idaho 434, 807 P.2d 1272 (1991).

Water Conservation Board.

If the state water conservation board be a municipal or quasi-municipal organization, the law creating it violates this section. *State*

Water Conservation Bd. v. Enking, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Opinions of Attorney General. Under current law as expressed in *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983), cert. denied, 469 U.S. 870 (1984), and *City of Pocatello v. Peterson*, 93 Idaho 774, 473 P.2d 644 (1970), proposed improvements to the Cascade water system would be ordinary and necessary expenses; therefore, art. 8, § 3, of the State Constitution would not require voter ratification of the debt. OAG 88-3.

This section is not violated by issuance of refunding bonds which result in a net present value savings to a district without increasing the outstanding indebtedness of the district. The outstanding indebtedness is not increased by selling refunding bonds at a premium provided the premium is used for refunding purposes. OAG 90-8.

The proposed One Percent Initiative's requirement that "special taxes" be approved by two-thirds of the qualified electors would, taken literally, conflict with Idaho's Constitution, which allows creation of bonded indebtedness by a two-thirds vote of the qualified electors voting in the election. OAG 91-9.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 584.

§ 3A. Environmental pollution control revenue bonds — Election on issuance. — Counties of the state may in the manner prescribed by law issue revenue bonds for the purpose of acquiring, constructing, installing and equipping facilities designed for environmental pollution control, including the acquisition of all technological facilities and equipment necessary or convenient for pollution control, to be financed for, or to be sold, leased or otherwise disposed of to, persons, associations, or corporations other than municipal corporations or other political subdivisions; provided, that such revenue bonds are issued with the assent of a majority of the qualified electors of the county voting at an election to be called and held for that purpose; and provided further, that such revenue bonds shall not be secured by the full faith and credit or the taxing power of the state or of any political subdivision thereof. No provision of this constitution, including, but not limited to sections 3 and 4 of article VIII and section 4 of article XII, shall be construed as a limitation upon the authority granted under this section. Nothing herein contained shall authorize any county of the state to operate any industrial or commercial enterprise.

Compiler's notes. This section was added to Article VIII as proposed by S.J.R. No. 114

(S.L. 1974, p. 1888) and ratified at the general election on November 5, 1974.

§ 3B. Port district facilities and projects — Revenue bond financing. — Port districts may acquire, construct, install, and equip facilities or projects to be financed for, or to be leased, sold or otherwise disposed of to persons, associations or corporations other than municipal corporations and may in the manner prescribed by law issue revenue bonds to finance the costs thereof; provided that any such revenue bonds shall be payable solely from charges, rents or payments derived from the facilities or projects financed thereby and shall not be secured by the full faith and credit or the taxing power of the port district, the state, or any other political subdivision. No provision of this Constitution, including, but not limited to Sections 3 and 4 of Article VIII and Section 4 of Article XII, shall be construed as a limitation upon the authority granted under this section.

Compiler's notes. This section was added to Article VIII as proposed by S.J.R. No. 102 (S.L. 1976, p. 978) and ratified at the general election on November 7, 1978 by a vote of 140, 534 to 98, 307.

§ 3C. Hospitals and health services — Authorized activities and financing. — Provided that no ad valorem tax revenues shall be used for activities authorized by this section, public hospitals, ancillary to their operations and in furtherance of health care needs in their service areas, may: (i) acquire, construct, install and equip facilities or projects to be financed for, or to be leased, sold or otherwise disposed of to persons, associations or corporations other than municipal corporations and may, in the manner prescribed by law, finance the costs thereof; (ii) engage in shared services and other joint or cooperative ventures; (iii) enter into joint ventures and partnerships; (iv) form or be a shareholder of corporations or a member of limited liability companies; (v) have members of its governing body or its officers or administrators serve as directors, managers, officers or employees of any venture, association, partnership, corporation or limited liability company as authorized by this section; (vi) own interests in partnerships, corporations and limited liability companies. Any obligations incurred pursuant to this section shall be payable solely from charges, rents or payments derived from the existing facilities and the facilities or projects financed thereby and shall not be secured by the full faith and credit or the taxing power of the county, hospital taxing district, the state, or any other political subdivision; and provided further, that any county or public hospital taxing district contracting such indebtedness shall own its just proportion to the whole amount so invested. The authority granted by this section shall be exercised for the delivery of health care and related service and with the prior approval of the governing body of the county, hospital district or other governing body of a public hospital. No provisions of this Constitution including, but not limited to Sections 3 and 4 of Article VIII, and Section 4 of Article XII, shall be construed as a limitation upon the authority granted under this section.

Compiler's notes. The section was added to Article VIII by S.J.R. 111 (S.L. 1996, p. 1473) and ratified at the general election November 5, 1996.

§ 4. County, etc., not to loan or give its credit. — No county, city, town, township, board of education, or school district, or other subdivision, shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in aid of any individual, association or corporation, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of this state.

Sec. to sec. ref. This section is referred to in § 50-2706.

Cited in: *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983); *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

ANALYSIS

Advance of moneys for public business.
Aid to corporation.
Construction.
Creating trust.
Deposits of public money.
Expense of defense of police officers.
Health facilities.
Improvement bonds.
Irrigation districts.
Lease of county property.
Medical aid to indigents.
Membership in mutual insurance company.
Railroad districts.
Redevelopment agencies.
Utility projects.

Advance of Moneys for Public Business.

This section would not be violated by a statute advancing money to a public officer for expenses out of an appropriation for that purpose for governmental business; such a transaction does not create the relation of debtor and creditor nor does it loan or extend credit to private sources. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

Aid to Corporation.

The constitutional prohibition against any municipality lending its credit in aid of a private corporation is violated by a statute which authorized municipality to issue bonds for acquisition of manufacturing, industrial or commercial enterprises. *Village of Moyie Springs v. Aurora Mfg. Co.*, 82 Idaho 337, 353 P.2d 767 (1960).

Construction.

This section must be construed in conjunction with § 2 of this article. *Boise-Payette Lumber Co. v. Challis Independent Sch. Dist.* No. 1, 46 Idaho 403, 268 P. 26 (1928).

While it is difficult to overcome reasoning that infliction of lien liability upon property of district to pay debts of contractor is not loaning of credit of district in violation of this section, there is no room for doubt that mak-

ing property of district liable to lien for debt of contractor or subcontractor to subcontractor, materialman, or laborer, with whom district stands in no contract relation, is making district responsible for "debt contract or liability of" contractor. *Boise-Payette Lumber Co. v. Challis Independent Sch. Dist. No. 1*, 46 Idaho 403, 268 P. 26 (1928).

This provision prohibits transactions creating the traditional relationship of borrower and lender. *Bannock County v. Citizens' Bank & Trust Co.*, 53 Idaho 159, 22 P.2d 674 (1933).

To constitute a violation of the provisions of this section it is essential that there be an imposition of liability directly or indirectly on the political body. Leasing school athletic field to a baseball team did not violate this section or art. 12, § 4. *Hansen v. Independent Sch. Dist.*, 61 Idaho 109, 98 P.2d 959 (1939).

A statute authorizing school trustees to enter into a contract to combine for educational purposes with another school district is not in violation of this provision. *Independent Sch. Dist. No. 6 v. Common Sch. Dist. No. 38*, 64 Idaho 303, 131 P.2d 786 (1942).

Contract of irrigation district to furnish "seepage and waste" waters to property owners outside district is not a contract to pledge faith or credit in aid of an individual. *Jensen v. Boise-Kuna Irrigation Dist.*, 75 Idaho 133, 269 P.2d 755 (1954).

The proprietary powers of municipal corporations in this state are limited to functions and purposes which are municipal in character as distinguished from those which are private in character and engaged in for profit; an incidental or indirect benefit to the public cannot transform a private industrial enterprise into a public one or imbue it with a public purpose. *Village of Moyie Springs v. Aurora Mfg. Co.*, 82 Idaho 337, 353 P.2d 767 (1960).

The police retirement fund provided by chapter 15 of title 50 of the state code remains within the effective control of the municipality, but, to the extent that the commissioners provided therein have any autonomy, in disbursing the fund to the beneficiaries, as provided in § 50-1504, they are not discharging a liability of the city to a private association in violation of this section, but are disbursing public funds from a public trust for a public purpose, i. e., compensation of faithful public

servants for service rendered over the years. *Hanson v. City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968).

The framers of the Idaho Constitution had no intention of limiting the power of municipalities to contract in furtherance of the public interest, but rather of limiting "loans" or "donations" of public credit; these words clearly limit the scope of the credit clause to cases in which the public credit is under the control or private interests. *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 703 P.2d 714 (1985).

Creating Trust.

Placing county property in the hands of a trustee to be dealt with by him for the benefit of county and other creditors was a loan of credit in violation of this section. *Johnson v. Young*, 53 Idaho 271, 23 P.2d 723 (1933).

Deposits of Public Money.

Public moneys deposited by county assessor in bank becoming insolvent were properly classifiable for payment as trust fund, though not specially deposited. *White v. Pioneer Bank & Trust Co.*, 50 Idaho 589, 298 P. 933 (1931), overruled on other grounds, *Independent Sch. Dist. No. 1 v. Diefendorf*, 57 Idaho 191, 64 P.2d 393 (1937).

Statute providing for classifying deposits of public funds, not specially deposited, as having same priority as debts due any other depositor was unconstitutional as applied to deposit of moneys collected by county assessor for automobile licenses. *White v. Pioneer Bank & Trust Co.*, 50 Idaho 589, 298 P. 933 (1931), overruled on other grounds, *Independent Sch. Dist. No. 1 v. Diefendorf*, 57 Idaho 191, 64 P.2d 393 (1937).

Deposit of county funds on general deposit with a bank does not create the relation of creditor and debtor, and does not constitute a lending of credit in violation of this section or of art. 12, § 4, upholding public depository law. *Bannock County v. Citizens' Bank & Trust Co.*, 53 Idaho 159, 22 P.2d 674 (1933).

The holding in *White v. Pioneer Bank & Trust Co.*, 50 Idaho 589, 298 P. 933 (1931), that public funds illegally deposited without security are entitled to preference against insolvent bank, is overruled. School district holding cashier's check is not loaning money in violation of this section and is not entitled to preference. *Independent Sch. Dist. No. 1 v. Diefendorf*, 57 Idaho 191, 64 P.2d 393 (1937).

Contention that statute authorizing the placing of county funds in a bank of general deposit and thereby creating the relation of debtor and creditor violates this section is denied, and the county is held to be a common creditor of the defunct bank. *Aetna Cas. & Sur. Co. v. Wedgwood*, 57 Idaho 682, 69 P.2d 128 (1937).

Expense of Defense of Police Officers.

Where police officers are sued for battery allegedly committed upon the plaintiff, and they contend that the municipality was under duty to take up their defense because their act was a corporate one, they should have notified the corporate council of the filing of said action and applied to the court in which the action was pending to have the municipality brought in as a party defendant, and failing so to do, they could not obtain reimbursement for money laid out and expended in their defense. *City of Nampa v. Kibler*, 62 Idaho 511, 113 P.2d 411 (1941).

A municipality may, but can not be required to, defray the expense of defending its officers for tortious or criminal act, where the act is such as to render it a corporate act of the municipality. *City of Nampa v. Kibler*, 62 Idaho 511, 113 P.2d 411 (1941).

Health Facilities.

Since the only funds obligated by the Health Facilities Act (§§ 39-1441 — 39-1460) to satisfy payments due on bonds and notes issued thereunder are the rates, rents and fee charges for the use of and for the services furnished by each facility, neither the state nor any other governmental unit nor any state created agency has been obligated to meet the obligations of the bonds and notes issued by the Health Facilities Authority and thus the Act does not violate the provisions of this article. *Board of County Comm'rs v. Idaho Health Facilities Auth.*, 96 Idaho 498, 531 P.2d 588 (1974).

Improvement Bonds.

Levy of tax by city to pay holders of improvement district bonds whose bonds were liens upon specific parcels of land within the district is not a public purpose. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

This provision is coextensive with the law that taxes can be imposed only for a public purpose. But there is nothing in the Constitution inhibiting a legislative grant based on a moral or equitable consideration arising from past benefits accrued to the state or an obligation which it may justly assume. By *Leeper, J.*, dissenting. *Oregon S.L.R.R. v. Berg*, 52 Idaho 499, 16 P.2d 373 (1932).

Irrigation Districts.

Since in a case where a replacement dam was to be built under §§ 43-2201 — 43-2207 and the Federal Reclamation Act and a bond issue had been approved to finance it, the relevant portions of § 43-2201, the various contracts and the trust indenture clearly provided that the bond payments could be made only from a special fund and the only obligation that the participating irrigation districts had with respect to the special fund and the bond payments as provided by § 43-2201 and their respective spaceholder contracts was to

pay their respective portions of the principal and interest on the bonds and were not obligated to pay the share of bond payments which had been apportioned to other participating irrigation districts. The proposed bond issue did not constitute an unlawful loaning of the credit of the irrigation districts in violation of either this section or Idaho Const., art. XII, § 4. *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978).

Lease of County Property.

In an action challenging the validity of lease of county fairground property evidence that county's only expenditures were proper expenditures for insurance premiums, extension of waterline, and access road work was binding on court. *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

The expenditures for fire insurance premiums by the county on a fairground building leased to a private horse racing corporation, and expenditures for extension of a waterline to the building and access road work, were not in violation of the prohibition of expenditure of county funds for private benefit, in view of the primary public benefit from such expenditures. *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

Medical Aid to Indigents.

Sections 31-3401 — 31-3410 (now repealed) and §§ 31-3501 — 31-3516, were not unconstitutional under Const., Art. 12, § 4 and this section, because those constitutional provisions were adopted only to prevent private interests from gaining advantage at the expense of the taxpayer and were not intended to prohibit counties from giving aid to indigents; since the fund remains within the effective control of the municipality, it is apparent that the evils sought to be prevented by those constitutional provisions do not exist. *Idaho Falls Consol. Hosps. v. Bingham County Bd. of County Comm'rs*, 102 Idaho 838, 642 P.2d 553 (1982).

Membership in Mutual Insurance Company.

School districts are prohibited from becoming members of a county mutual fire insurance company. This section is intended to prevent any county or municipal corporation from lending credit to or becoming interested in any private enterprise except as provided in Const., Art. 12, § 4. To permit a school district to become a member of a county mutual fire insurance company would be to sanction the use of public funds for a private purpose. *School Dist. No. 8 v. Twin Falls*

County Mut. Fire Ins. Co., 30 Idaho 400, 164 P. 1174 (1917).

Railroad Districts.

Act of legislature, providing for the formation of railroad districts, voting of bonds, and purchase or construction of railroads by such districts and providing for operating or leasing the same, is in violation of this section. *Atkinson v. Board of Comm'rs*, 18 Idaho 282, 108 P. 1046, 28 L.R.A. (n.s.) 412 (1910).

Redevelopment Agencies.

Although action by the city of Boise pursuant to § 50-2015 may constitute the city's raising money for or donating or lending credit to the Boise Redevelopment Agency, the prohibitions of Art. 8, § 4 and Art. 12, § 4 of the Idaho Constitution are not applicable to the agency since it is a public, rather than a private, enterprise. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

The Boise Redevelopment Agency is not a subdivision of the state within the meaning of Idaho Constitution, Art. 8, §§ 3 or 4. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Utility Projects.

In a ground lease and power sales contract relating to the construction of a hydroelectric project, to be financed by the city under §§ 50-1026 and 50-1026A, a contractual obligation to sell a certain percentage of power to the company leasing property to the city for the project for a period in excess of the proposed term of the bonds did not violate either this section or Const., Art. 12, § 4, prohibiting loans or donations of public credit, since such obligation was of a contractual nature, and a sale of adequate consideration did not amount to a loan or donation; the accrual of incidental benefits to a private enterprise will not invalidate an otherwise constitutional transaction. *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 703 P.2d 714 (1985).

Opinions of Attorney General. School districts are constitutionally prohibited from creating or aiding any private non-profit corporation and are not statutorily authorized to create public corporations; however, individuals acting in a private capacity may create a non-profit corporation for the purpose of soliciting and managing gifts exclusively in support of a public school system. Gifts to such a non-profit corporation would qualify for income tax credits provided by § 63-3029A. OAG 86-13.

Collateral References. Discussion of this section is constitutional convention. *Constitutional Convention Proceedings*, Vol. I, p. 602.

§ 5. Special revenue financing. — The legislature may enact laws authorizing the creation of public corporations by counties or cities to issue

nonrecourse revenue bonds or other nonrecourse revenue obligations and to apply the proceeds thereof in the manner and for the purposes heretofore or hereafter authorized by law, subject to the following limitations:

Nonrecourse revenue bonds and other nonrecourse revenue obligations issued pursuant to this section shall be payable only from money or other property received as a result of projects financed by the nonrecourse revenue bonds or other nonrecourse revenue obligations and from money and other property received from private sources.

Nonrecourse revenue bonds and other nonrecourse revenue obligations issued pursuant to this section shall not be payable from or secured by any tax funds or governmental revenue or by all or part of the faith and credit of the state or any political subdivisions.

Nonrecourse revenue bonds or other nonrecourse revenue obligations issued pursuant to this section may be issued only if the issuer certifies that it reasonably believes that the interest paid on the bonds or obligations will be exempt from income taxation by the federal government.

Nonrecourse revenue bonds or other nonrecourse revenue obligations may only be used to finance industrial development facilities consisting of manufacturing, processing, production, assembly, warehousing, solid waste disposal, recreation and energy facilities, excluding facilities to transmit, distribute or produce electrical energy.

The counties or cities shall never exercise their respective attributes of sovereignty including, but not limited to, the power to tax, the power of eminent domain, and the police power on behalf of any industrial development project authorized pursuant to this section.

Sections 2, 3 and 4 of Article VIII shall not be construed as a limitation upon the authority granted by this section. The proceeds of revenue bonds and other revenue obligations issued pursuant to this section for the purpose of financing privately owned property or loans to private persons or corporations shall be subject to audit by the state but shall not otherwise be deemed to be public money or public property for purposes of this constitution. This section is supplemental to and shall not be construed as a repeal of or limitation on any other authority lawfully exercisable under the constitution and laws of this state, including, among other, any existing authority to issue revenue bonds.

Compiler's notes. This section was added as proposed by S.L. 1982, p. 933, H.J.R. No. 17 and ratified at the general election November 2, 1982.

Cited in: Utah Power & Light Co. v. Campbell, 108 Idaho 950, 703 P.2d 714 (1985).

Article IX

EDUCATION AND SCHOOL LANDS

SECTION.

1. Legislature to establish system of free schools.
2. Board of education.
3. Public school permanent endowment fund to remain intact.

SECTION.

4. Public school permanent endowment fund defined.
5. Sectarian appropriations prohibited.
6. Religious test and teaching in school prohibited.

SECTION.

7. State board of land commissioners.
8. Location and disposition of public lands.
9. Compulsory attendance at schools.

SECTION.

10. State University — Location, regents, and lands.
11. Investing permanent endowment funds.

§ 1. Legislature to establish system of free schools. — The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools.

Cited in: Howard v. Independent Sch. Dist. No. 1, 17 Idaho 537, 106 P. 692 (1910); Pike v. State Bd. of Land Comm'rs, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911); Fenton v. Board of Comm'rs, 20 Idaho 392, 119 P. 41 (1911); Idaho-Western R.R. v. Columbia Conference Synod, 20 Idaho 568, 119 P. 60, 38 L.R.A. (n.s.) 497 (1911); Independent Sch. Dist. No. 6 v. Common Sch. Dist. No. 38, 64 Idaho 303, 131 P.2d 786 (1942); Hanson v. De Coursey, 66 Idaho 631, 166 P.2d 261 (1946); Cameron v. Lakeland Class A Sch. Dist. No. 272, 82 Idaho 375, 353 P.2d 652 (1960).

ANALYSIS

- Appropriation for college.
- Constitutionally Based Education Claims Act.
- Discontinuance of attendance units.
- Duty of legislature.
- Emergency funds.
- High schools.
- Mootness.
- No fundamental right.
- School books.
- School districts.
- Annexation.
- In general.
- Social and extra-curricular activities.
- Standing to challenge funding.
- Supervision of education.
- Transcript of grades.
- Uniform school system.

Appropriation for College.

Session Laws 1955, ch. 277, appropriating the sum of \$100,000 to apply on Dormitory Revenue Bond Issue of \$375,000 issued by board of trustees of Northern Idaho College of Education in 1950 under provisions of Educational Bond Act, S.L. 1935 (1st E.S.), ch. 55, since college had been closed since 1951 due to failure of legislature to appropriate funds, was not unconstitutional on the ground that it was an attempt to loan the credit of the state for a private purpose, since it was designed and intended for a public purpose, to wit, payment for a college building in furtherance of educational objectives of the state. Davis v. Moon, 77 Idaho 146, 289 P.2d 614 (1955).

Constitutionally Based Education Claims Act.

The Constitutionally Based Educational Claims Act (CBECA) does not create significant and impermissible barriers upon the right of access to courts and does not violate Article I, § 18 of the Idaho Constitution. Osmunson v. State, 135 Idaho 292, 17 P.3d 236 (2000).

Discontinuance of Attendance Units.

Former law that provided for discontinuance of attendance units within reorganized districts did not violate this section of the State Constitution guaranteeing a system of free schools, since such law promoted the principle of home rule by providing for alternative methods for selecting those units which were to be discontinued. Robbins v. Joint Class A. Sch. Dist. No. 331, 72 Idaho 500, 244 P.2d 1104 (1952).

Duty of Legislature.

The legislature is required to provide a means for school districts to fund facilities that provide a safe environment conducive to learning. Idaho Sch. for Equal Educ. Opportunity v. State, 132 Idaho 559, 976 P.2d 913 (1999).

The trial court did not err in dismissing claims for a declaration that a thorough system of public, free common schools requires (1) equalization of funding for capital expenditures and (2) not submitting special override levy elections to the voters for special facilities levies. Idaho Sch. for Equal Educ. Opportunity v. State, 132 Idaho 559, 976 P.2d 913 (1999).

Emergency Funds.

Purpose of statute which is in the nature of an emergency measure to procure funds with which to provide, among other things, teachers, classroom facilities and transportation for new classroom units, the number of which could not be determined until pupil enrollment took place at the commencement of the next term. Board of Trustees v. Board of Comm'rs, 83 Idaho 172, 359 P.2d 635 (1961).

High Schools.

A high school is a "common school" within the meaning of this section. Paulson v.

Minidoka County Sch. Dist. No. 331, 93 Idaho 469, 463 P.2d 935 (1970).

Mootness.

Even if court was to determine that controversy involving plaintiff's declaratory judgment action challenging the alleged inadequacy of the method and level of school funding was technically moot due to sunseting of Board of Education's regulations, action fell within exception to the mootness doctrine since case was capable of repetition, yet evaded review and was of sufficient fundamental importance to justify resolving issue on grounds of public interest and future direction and guidance, because the "thoroughness" of the system of public education affects the present and future quality of life of state's citizens and children. Idaho Sch. for Equal Educ. Opportunity ex rel. Eikum v. Idaho State Bd. of Educ. ex rel. Mossman, 128 Idaho 276, 912 P.2d 644 (1996).

No Fundamental Right.

Education is not a fundamental right because it is not a right directly guaranteed by the state constitution; rather, this section imposes a duty upon the legislature to establish and maintain a general, uniform and thorough system of public, free common schools. Idaho Schs. for Equal Educ. Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724 (1993).

School Books.

School books are indistinguishable from other fixed educational items, and the defendants may not charge students for such items because the common schools are to be "free" as the constitution requires. Paulson v. Minidoka County Sch. Dist. No. 331, 93 Idaho 469, 463 P.2d 935 (1970).

School Districts.

—Annexation.

Acts 1939, ch. 92, a special law providing machinery for annexation of territory to Independent School District No. 1 of Nez Perce County does not violate this section. Common Sch. Dist. No. 2 v. District No. 1, 71 Idaho 192, 227 P.2d 947 (1951).

—In General.

A school district is a mere agency of the state; as such, however, it is charged with the sovereign duty of maintaining the schools within its territory and of receiving funds and property and managing, controlling and expending them. It is the agent of the state within its territory. It would amount to neglect of duty for it to fail to claim funds belonging to its territory. It, therefore, may sue another district receiving and spending more than its share of the public fund. Independent Sch. Dist. No. 1 v. Common Sch. Dist.

No. 1, 56 Idaho 426, 55 P.2d 144 (1936).

The organization and maintenance of school districts are purely matters of administrative convenience in the execution of the constitutional mandate contained in this section. American Nat'l Bank v. Joint Indep. Sch. Dist. No. 9, 61 Idaho 405, 102 P.2d 826 (1940).

Class A School District organized pursuant to legislative act in compliance with constitutional mandate to legislature "to establish and maintain a general, uniform, and thorough system of public free common schools" was an agency of the state. Bullock v. Joint Class "A" Sch. Dist. No. 241, 75 Idaho 304, 272 P.2d 292 (1954).

It is conceded that the creation, destruction, expansion or contraction of school districts is a legislative and not a judicial function. The legislature has plenary powers in such matters. Electors v. State Bd. of Educ., 78 Idaho 602, 308 P.2d 225 (1957).

Social and Extra-curricular Activities.

As social and extra-curricular activities are not necessary elements of a high school career, the constitution does not prohibit school district from setting fees to cover costs of such activities to be paid by students who wish to exercise an option to participate in them. Paulson v. Minidoka County Sch. Dist. No. 331, 93 Idaho 469, 463 P.2d 935 (1970).

Standing to Challenge Funding.

School districts had authority to maintain suit against the State of Idaho challenging the constitutionality of the state's system of funding public schools where the school districts alleged they were being deprived of funds they were entitled to under this section. Idaho Schs. for Equal Educ. Opportunity v. Evans, 123 Idaho 573, 850 P.2d 724 (1993).

Actions of Idaho legislature impacting educational funding did not render moot a controversy involving plaintiff's declaratory judgment action challenging alleged inadequacy of method and level of school funding as being inadequate to provide a constitutionally required uniform and thorough education. Although legislature made certain changes, at time summary judgment motion was heard there was still an Idaho constitutional requirement of a thorough education which was not amended or repealed during pendency of the litigation, and legislative changes did not answer question of whether a constitutionally thorough education was provided. Idaho Sch. for Equal Educ. Opportunity ex rel. Eikum v. Idaho State Bd. of Educ. ex rel. Mossman, 128 Idaho 276, 912 P.2d 644 (1996).

Supervision of Education.

It must be conceded that under the Idaho Constitution parents have a right to participate in the supervision and control of the education of their children and while the

constitution vests the legislature with plenary power as well as a specific mandate to provide for the education of the children of the state and the board of education with general supervision of the public school system, it cannot be seriously urged that in clothing the legislature and the board with such powers that people transfer to them the rights accorded to parenthood before the constitution was adopted. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

Under this section, the requirements for school facilities, instructional programs and textbooks, and transportation systems as contained in regulations presently in effect, and promulgated pursuant to the legislative directive in § 33-118, are consistent with the Supreme Court of Idaho's view of thoroughness. *Idaho Schs. for Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993).

Transcript of Grades.

Since a high school is required to be free it cannot require payment of fee before releasing transcript of grades although a reasonable fee after the first free transcript, might be charged for subsequent transcripts. *Paulson v. Minidoka County Sch. Dist. No. 331*, 93 Idaho 469, 463 P.2d 935 (1970).

Uniform School System.

The constitutional mandate to the state to establish and maintain a uniform system of public schools does not establish education as a basic fundamental right which requires that all services and facilities be equal throughout the state and that a central state system

replace local financing to insure equal expenditures per pupil throughout the state. *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

The state's system of public school financing, which is in part dependent upon the school district ad valorem property tax does not violate the requirement of uniformity even though amounts raised and spent per pupil vary among the school districts because of differences in the districts' assessed valuations. *Thompson v. Engelking*, 96 Idaho 793, 537 P.2d 635 (1975).

The uniformity requirement in the education clause requires only uniformity in curriculum, not uniformity in funding. *Idaho Schs. for Equal Educ. Opportunity v. Evans*, 123 Idaho 573, 850 P.2d 724 (1993).

The uniformity requirement of this section does not require uniformity in the way in which the legislature provides for funding facilities and other capital expenditures of school districts. *Idaho Sch. for Equal Educ. Opportunity v. State*, 132 Idaho 559, 976 P.2d 913 (1999).

Opinions of Attorney General. Since § 63-923 cannot be implemented, it has no effect on the implementation of those statutes affected by S.L. 1995, ch. 26. OAG 95-3.

Collateral References. Discussion of this article in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, pp. 201, 637; Vol. II, pp. 1437, 1452, 1491.

Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, pp. 637, 827; Vol. II, p. 1437.

§ 2. Board of education. — The general supervision of the state educational institutions and public school system of the state of Idaho, shall be vested in a state board of education, the membership, powers and duties of which shall be prescribed by law. The state superintendent of public instruction shall be ex officio member of said board.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 2. The general supervision of the public schools of the state shall be vested in a board of education, whose powers and duties shall be prescribed by law; the superintendent of public instruction, the secretary of state and attorney-general, shall constitute the board of which the superintendent of public instruction shall be president."

It was amended, as proposed by S.L. 1911, p. 791, H.J.R. No. 30, and ratified at the general election in November, 1912, to read as it now appears.

Cross ref. State board of education, §§ 33-101 — 33-126.

Comp. provisions: Utah. Art. 10, § 3.

Cited in: *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447, 1912B

Ann. Cas. 1344 (1911); *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955); *Cameron v. Lakeland Class A Sch. Dist. No. 272*, 82 Idaho 375, 353 P.2d 652 (1960); *Union Pac. R.R. v. Board of Tax Appeals*, 103 Idaho 808, 654 P.2d 901 (1982).

ANALYSIS

Alteration of trustee district boundaries.
Immunity from federal suit.
Parental supervisory rights.
Single board.
Student needs.

Alteration of Trustee District Boundaries.

The alteration of the boundaries of trustee districts in a county by the state board of education was not valid, where the authority

to alter the boundaries vested in the county board of education under S.L. 1949, ch. 25, subd. 6 though abolished by the legislature by S.L. 1953, ch. 272 was not transferred to the state board of education, since the latter act provided that "all other functions of said board (county board of education) not transferred by this act are hereby abolished." *Class B Sch. Dist. No. 421 v. Brown*, 77 Idaho 330, 292 P.2d 769 (1955).

Immunity from Federal Suit.

The State Board of Education is immune from suit in federal court pursuant to the Eleventh Amendment of the United States Constitution. *Milbouer v. Keppler*, 644 F. Supp. 201 (D. Idaho 1986).

Parental Supervisory Rights.

It must be conceded that under the Idaho Constitution parents have a right to participate in the supervision and control of the education of their children and while the constitution vests the legislature with plenary power as well as a specific mandate to provide for the education of the children of the state and the board of education with general supervision of the public school system, it cannot be seriously urged that in clothing the legislature and the board with such powers that people transfer to them the rights accorded to parenthood before the constitution was adopted. *Electors v. State Bd. of Educ.*, 78 Idaho 602, 308 P.2d 225 (1957).

Single Board.

Since this section requires a single board of education to supervise the state educational institutions and public school system of the State of Idaho, House Bill 345 (1993, ch. 404, which amended §§ 33-101, 33-102, 33-102A, and 33-2802) which created three boards of education was unconstitutional. *Evans v. Andrus*, 124 Idaho 6, 855 P.2d 467 (1993).

Student Needs.

Where plaintiff public school students with limited English language proficiency allege that the State Department of Education, State Board of Education, and Superinten-

dent of Public Instruction have failed to exercise their supervisory powers over local school districts to ensure that plaintiffs receive an equal education opportunity, these agencies are empowered under this section, §§ 33-116, 33-118 and 33-119 and required under federal law to ensure that the needs of students with limited English language proficiency are addressed. *Idaho Migrant Council v. Board of Educ.*, 647 F.2d 69 (9th Cir. 1981).

Opinions of Attorney General. Except where the Constitution limits the authority of the legislature with respect to the sale of state property as with respect to endowment and trust property, the legislature may authorize the sale of state buildings and may place the proceeds thereof in the general fund. OAG 83-2.

The historical enactment of this section as well as its plain language requires that the educational affairs of the state be governed by a single board of education; therefore, an interpretation of S.L. 1993, ch. 404, providing for three autonomous governing boards of education to supervise the education affairs of the state was unconstitutional. OAG 93-6.

In implementing the 1993 amendment of section 33-101 by House Bill 345, chapter 404, to comply with the constitutional requirements of this section, the Board of Education may create guidelines dividing the board into two advisory councils, one for higher education and the other for publication; the general supervision and control of education must be retained by the board and the duties of the councils should be structured by the board with this requirement in mind; each council can provide oversight in its particular areas of specialization and can be fact finders for the board and can provide their findings along with recommendations to the board; however the board must retain the power to make final determinations governing state educational institutions and the public school systems in the state. OAG 93-6.

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, pp. 638, 827; Vol. II, p. 1437.

§ 3. Public school permanent endowment fund to remain intact.

— The public school permanent endowment fund of the state shall forever remain inviolate and intact; the earnings of the public school permanent endowment fund shall be deposited into the public school earnings reserve fund and distributed in the maintenance of the schools of the state, and among the counties and school districts of the state in such manner as may be prescribed by law. No part of the public school permanent endowment fund principal shall ever be transferred to any other fund, or used or appropriated except as herein provided. Funds shall not be appropriated by the legislature from the public school earnings reserve fund except as follows: the legislature may appropriate from the public school earnings

reserve fund administrative costs incurred in managing the assets of the public school endowment including, but not limited to, real property and monetary assets. The state treasurer shall be the custodian of these funds, and the same shall be securely and profitably invested as may be by law directed. As defined and prescribed by law, the state shall supply losses to the public school permanent endowment fund, excepting losses on moneys allocated from the public school earnings reserve fund.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 3. Public school fund to remain intact. — The public school fund of the state shall forever remain inviolate and intact; the interest thereon only shall be expended in the maintenance of the schools of the state, and shall be distributed among the several counties and school districts of the state in such manner as may be prescribed by law. No part of this fund, principal or interest, shall ever be transferred to any other fund, or used or appropriated except as herein provided. The state treasurer shall be the custodian of this fund, and the same shall be securely and profitably invested as may be by law directed. The state shall supply all losses thereof that may in any manner occur."

This section was amended by S.L. 1998, p. 1368, H.J.R. No. 8, and ratified at the general election on November 3, 1998, to read as it now appears.

Cross ref. School foundation program, §§ 33-1001 — 33-1013.

Sec. to sec. ref. This section is referred to in § 57-724.

Cited in: *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911); *Kieldsen v. Barrett*, 50 Idaho 466, 297 P. 405 (1931); *State ex rel. Kinyon v. Enking*, 62 Idaho 649, 115 P.2d 97 (1941).

ANALYSIS

Adverse possession against state.
Amendments.
Construction.
Custodian of public school funds.
Diversion of school fund.
Income from investments.
Interest.
Nature of fund.
Not violated.
School district bonds.
Statute of limitations.
Supplying losses to school fund.
Taxes.

Adverse Possession Against State.

State school grant lands can not be acquired by adverse possession against the state no matter how long they have been adversely occupied. *United States v. Fenton*,

27 F. Supp. 816 (D. Idaho 1939).

Title to school lands granted to the state for the use of its schools can not be acquired by adverse possession against the state and a loan of school funds secured by mortgage can not be lost by a plea of the statute of limitations in a suit to foreclose it. *State v. Peterson*, 61 Idaho 50, 97 P.2d 603 (1939).

Amendments.

Where the 1998 constitutional amendments to amend Const. Art. IX, §§ 3 and 11 were related as part of a common scheme for funding education, the joint submission of the amendments to the electorate on a single ballot was constitutional, and the subsequently enacted Idaho School Bond Guaranty Act and related statutory amendments were upheld. *State Endowment Fund Inv. Bd. v. Crane*, 135 Idaho 667, 23 P.3d 129 (2001).

Construction.

These §§ 3 and 4 and the Admission Act (July 3, 1890, § 5, 26 Stat. 215, ch. 656) should be read together. *United States v. Fenton*, 27 F. Supp. 816 (D. Idaho 1939).

This section is not self-executing — rather it requires implementing legislation. *State ex rel. Moon v. State Bd. of Exmrs.*, 104 Idaho 640, 662 P.2d 221, cert. denied, 464 U.S. 992, 104 S. Ct. 483, 78 L. Ed. 2d 680 (1983).

Custodian of Public School Funds.

Although this section provides that the state treasurer is the custodian of public school funds, allocation of the investment power to a board under I.C. § 57-724 does not conflict with the treasurer's function. *Moon v. Investment Bd.*, 96 Idaho 140, 525 P.2d 335 (1974).

The authority granted to an investment board under § 57-721 to select and contract with a bank or trust company to act as custodian of permanent endowment fund assets does not deny state treasurer the right to custody of public school endowment funds. *Moon v. Investment Bd.*, 97 Idaho 595, 548 P.2d 861 (1976).

Diversion of School Fund.

No part of the permanent school fund of the state can be expended in payment of forfeitures imposed by the statute law of the state. The constitution expressly prohibits legislature from enacting a law that would divert

one dollar of such fund otherwise than as provided by the Constitution, and any law enacted by legislature diverting such funds for purposes other than those specified by the Constitution, would be unconstitutional. *State v. Fitzpatrick*, 5 Idaho 499, 51 P. 112 (1897); *State v. Peterson*, 61 Idaho 50, 97 P.2d 603 (1939).

The fact that the public school income fund contains income from the public school fund does not prevent the legislature from placing specified funds, for the specific purpose of being used for the teachers' retirement system, into the public school income fund and later withdrawing such funds for the use of the teachers' retirement system since such withdrawal would not constitute a withdrawal from the public school fund. *Teachers' Retirement Sys. v. Williams*, 84 Idaho 467, 374 P.2d 406 (1962).

The legislature may not appropriate and authorize a portion of the earnings from the investment of the public school funds to be transferred to the investment board expense fund to defray the expenses incurred by the investment board in the investment of the public school fund. *Moon v. Investment Bd.*, 98 Idaho 200, 560 P.2d 871 (1977).

Income from Investments.

Section 57-724, permitting the offsetting of capital gains against capital losses at the end of a four-year accounting period, is in keeping with the constitutional mandate of this section, governing the public school fund. Under § 57-724, the net capital gains at the end of each four-year period become part of principal and then become inviolate. *State ex rel. Moon v. State Bd. of Exmrs.*, 104 Idaho 640, 662 P.2d 221, cert. denied, 464 U.S. 992, 104 S. Ct. 483, 78 L. Ed. 2d 680 (1983).

Interest.

The interest earned on the agency asset accounts is an integral part of the total monies received from school lands and has to be used for the protection of the lands constituting the trust res or for school purposes in accordance with the terms of the trust established by the Constitution; therefore, crediting such interest generated by the agency asset accounts to the general fund is a violation of the terms of the school endowment grant and the Constitution. *Moon v. State Bd. of Land Comm'rs*, 111 Idaho 389, 724 P.2d 125 (1986).

Nature of Fund.

Public school endowment funds are trust funds of the highest and most sacred order, made so by act of congress and this Constitution, so considered by members of the constitutional convention and so recognized and declared by this court and the highest courts of other land-grant states. *State v. Peterson*,

61 Idaho 50, 97 P.2d 603 (1939).

Not Violated.

Section 58-140, providing for a special account for the maintenance, management, and protection of state owned timber, grazing, and recreation site lands, does not violate the constitutional provisions concerning the public school fund and public school endowment lands. *Moon v. State Bd. of Land Comm'rs*, 111 Idaho 389, 724 P.2d 125 (1986).

School District Bonds.

Under this section the department of public investments was prohibited from selling bonds, purchased with moneys from the state school funds, for the purpose of reinvesting the proceeds. *Parsons v. Diefendorf*, 53 Idaho 219, 23 P.2d 236 (1933).

School district bonds are those securities the law authorized, before and at the time of the adoption of the amendment, to issue upon the vote of two-thirds of the electors of the issuing district and requiring that a sinking fund be provided for the payment of the bonds at maturity. *Girard v. Diefendorf*, 54 Idaho 467, 34 P.2d 48 (1934).

This section and § 11 of this article prohibit the investment of school funds in anticipation negotiable notes of a school district, as such notes are not school bonds. *Girard v. Diefendorf*, 54 Idaho 467, 34 P.2d 48 (1934).

The setting aside of monies from the public school endowment fund for the purpose of purchasing notes to pay defaulted school district bonds is not a transfer, use or appropriation of funds in violation of either this section or section 5 of the Idaho Admission Bill. *State Endowment Fund Inv. Bd. v. Crane*, 135 Idaho 667, 23 P.3d 129 (2001).

Statute of Limitations.

The state, in handling the school funds, is acting in the capacity of a trustee for the common schools of the state and its officials have a limited discretion circumscribed by constitutional limitation. The expression "forever remain inviolate and intact" would not mean ten, or any number of years that may be enacted into a statute of limitations, but it means "forever." *United States v. Fenton*, 27 F. Supp. 816 (D. Idaho 1939).

State can not violate the provisions making school funds sacred by enacting limitation laws preventing a recovery of such funds after lapse of a certain period. It has not the power to accept such trust funds, loan them out and, by its act, bar their recovery and its duty to recover them upon nonpayment of the loan. *United States v. Fenton*, 27 F. Supp. 816 (D. Idaho 1939).

Under §§ 3 and 4 of this article, statutes of limitation are inapplicable to mortgages held by the state representing loans of permanent endowment school fund. *United States v.*

Fenton, 27 F. Supp. 816 (D. Idaho 1939).

Supplying Losses to School Fund.

The manner in which losses to the school fund must be supplied by the state by this section is within the discretion of the legislature. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

The fact that this section obligates the legislature to cover "all losses" from the public school funds does not mean that loss figured on a "marketable value" accounting system under I.C. § 57-724 is impermissible. *Moon v. Investment Bd.*, 96 Idaho 140, 525 P.2d 335 (1974).

Taxes.

Statutes do not make it mandatory upon land board or commissioner of public investments to pay delinquent taxes upon lands purchased by state in foreclosing mortgages. *State ex rel. Hoover v. Minidoka County*, 50 Idaho 419, 298 P. 366 (1931).

Applying gasoline tax to gasoline used by school district is not violation of constitutional protection of principal and interest of school endowment funds. *Independent Sch. Dist. v. Pfof*, 51 Idaho 240, 4 P.2d 893 (1931).

School districts are not exempt from payment of state gasoline tax by virtue of this section. The exemption of state agencies from taxation does not apply to excise taxes. Inde-

pendent Sch. Dist. v. Pfof, 51 Idaho 240, 4 P.2d 893 (1931).

Opinions of Attorney General. As custodian of the public school fund, the state treasurer has a custodial responsibility to safeguard fund assets entrusted to his or her care. This responsibility is broad enough, at a minimum, to refuse to open accounts or transfer funds for clearly illegal investments, and as to investments which the treasurer believes are possibly illegal, the transaction should be completed, and legal resistance, if any, to a board request for investment should be limited to judicial review of the question. OAG 85-4.

No language in this section authorizes legislative appropriation of the income, once earned and distributed by the Land Board, from the university endowments and, in fact, the express terms of the section limit the legislature's appropriation authority to paying the administrative costs; thus, there appears to be no intent by the people of the state, in amending the section, to provide for anything other than the dedication of such university endowment fund income perpetually to the university endowment beneficiaries. OAG 00-45.

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, pp. 647, 828; Vol. II, p. 1437.

§ 4. Public school permanent endowment fund defined. — The public school permanent endowment fund of the state shall consist of the proceeds from the sale of such lands as have heretofore been granted, or may hereafter be granted, to the state by the general government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state; all other grants, gifts, devises, or bequests made to the state for general educational purposes; and amounts allocated from the public school earnings reserve fund. Provided however, that proceeds from the sale of school lands may be deposited into a land bank fund to be used to acquire other lands within the state for the benefit of endowment beneficiaries. If those proceeds are not used to acquire other lands within a time provided by the legislature, the proceeds shall be deposited into the public school permanent endowment fund along with any earnings on the proceeds.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 4. **Public school fund defined.** — The public school fund of the state shall consist of the proceeds of such lands as have

heretofore been granted, or may hereafter be granted, to the state by the general government, known as school lands, and those granted in lieu of such; lands acquired by gift or grant from any person or corporation under

any law or grant of the general government; and of all other grants of land or money made to the state from the general government for general educational purposes, or where no other special purpose is indicated in such grant; all estates or distributive shares of estates that may escheat to the state; all unclaimed shares and dividends of any corporation incorporated under the laws of the state; and all other grants, gifts, devises, or bequests made to the state for general educational purposes."

This section was amended by S.L. 1998, p. 1366, H.J.R. No. 6, and ratified at the general election on November 3, 1998. However, the Idaho Supreme Court, in *Idaho Watersheds Project v. State Bd. of Land Commissioners*, 133 Idaho 55, 982 P.2d 358 (1999), barred implementation of the ballot measure.

This section was also amended by S.L. 2000, p. 1669, H.J.R. No. 1, and ratified at the general election on November 7, 2000, to read as it now appears.

Cross ref. Public school fund, § 33-1001.

Cited in: *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911); *State ex rel. Kinyon v. Enking*, 62 Idaho 649, 115 P.2d 97 (1941).

ANALYSIS

Additional funds.

Interest.

Not violated.

Principal kept intact.

Proceeds.

Public lands defined.

Public school income fund.

Standing. *

Use of funds.

Additional Funds.

This section does not deprive the legislature of the power to allot to the public school fund other funds than those which must be paid into such fund. *Idaho Gold Dredging Co. v. Balderston*, 58 Idaho 692, 78 P.2d 105 (1938).

Interest.

The interest earned on the agency asset accounts is an integral part of the total moneys received from school lands and has to be used for the protection of the lands constituting the trust res or for school purposes in accordance with the terms of the trust established by the Constitution; therefore, crediting such interest generated by the agency asset accounts to the general fund is a violation of the terms of the school endowment grant and the Constitution. *Moon v. State Bd. of Land Comm'rs*, 111 Idaho 389, 724 P.2d 125 (1986).

Not Violated.

Section 58-140, providing for a special account for the maintenance, management, and

protection of state owned timber, grazing, and recreation site lands, does not violate the constitutional provisions concerning the public school fund and public school endowment lands. *Moon v. State Bd. of Land Comm'rs*, 111 Idaho 389, 724 P.2d 125 (1986).

Principal Kept Intact.

The proceeds from the sale of school lands must be kept forever intact and the state can not violate its trust nor dissipate such funds by enacting limitation acts preventing a recovery of such funds after a certain period, for it has not the power to accept such sacred trust fund and after loaning it out by its act bar its recovery and its duty to recover it on nonpayment of the loan. *United States v. Fenton*, 27 F. Supp. 816 (D. Idaho 1939).

Proceeds.

Although this section could be read to require that moneys received from leases or timber sales of public school endowment lands are "proceeds of such lands," it must be read in the context of the enabling act, § 5 of the Admission Bill, which provides clearly that "proceeds" only refers to moneys received from sales of endowment lands. *Moon v. State Bd. of Land Comm'rs*, 111 Idaho 389, 724 P.2d 125 (1986).

Public Lands Defined.

Public lands herein referred to do not include the beds of navigable waters or lands thereunder below the high water mark. *Northern Pac. R.R. v. Hirzel*, 29 Idaho 438, 161 P. 854 (1916). See also *United States v. Ladley*, 4 F. Supp. 580 (D. Idaho 1933); *Miller v. Lewiston-Clarkson Canning Co.*, 35 Idaho 669, 209 P. 194 (1922); *Bowman v. McGoldrick Lumber Co.*, 38 Idaho 30, 219 P. 1063 (1923); *Gasman v. Wilcox*, 54 Idaho 700, 35 P.2d 265 (1934).

Compare with *United States v. California*, 332 U.S. 19, 67 S. Ct. 1658, 91 L. Ed. 1889.

This article and §§ 4, 6, 8, 9, 10 and 11 of the admission bill refer only to lands granted for specific purposes. *Northern Pac. R.R. v. Hirzel*, 29 Idaho 438, 161 P. 854 (1916).

Public School Income Fund.

The fact that the public school income fund contains income from the public school income fund does not prevent the legislature from placing specified funds, for the specific purpose of being used for the teachers' retirement system, into the public school income fund and later withdrawing such funds for the use of the teachers' retirement system, since such withdrawal would not constitute a withdrawal from the public school fund. *Teachers' Retirement Sys. v. Williams*, 84 Idaho 467, 374 P.2d 406 (1962).

Regarding the income from the public school fund as dedicated to, and held in trust

for, support and maintenance of schools, the trust pursuit rule would operate to prevent its inseparable commingling with moneys appropriable to other uses, and any withdrawals from the mass for other uses would be presumed to be from moneys in the mass not so dedicated. *Teachers' Retirement Sys. v. Williams*, 84 Idaho 467, 374 P.2d 406 (1962).

Standing.

Because the direct beneficiaries of the school endowment lands trust are the schools or school districts, environmental groups, challenging timber sales on school endowment trust lands approved by the State Board of Land Commissioners and the Idaho Department of Lands, lacked the required legally protected interest to establish standing as neither environmental group represented a

single school or school district. *Selkirk-Priest Basin Ass'n v. State ex rel. Andrus*, 127 Idaho 239, 899 P.2d 949 (1995).

Use of Funds.

Under this section, together with §§ 5 and 8 of the admission bill, interest or income from proceeds of the sale of university lands can be used only in support and maintenance of the university, and in payment of the current expenses thereof and charges for conducting the same, and can not be used for erection or equipment of university buildings. *Roach v. Gooding*, 11 Idaho 244, 81 P. 642 (1905).

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, pp. 649, 829; Vol. II, p. 1438.

§ 5. Sectarian appropriations prohibited. — Neither the legislature nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose; provided, however, that a health facilities authority, as specifically authorized and empowered by law, may finance or refinance any private, not for profit, health facilities owned or operated by any church or sectarian religious society, through loans, leases, or other transactions.

Compiler's notes. As originally enacted this section read:

"§ 5. **Sectarian appropriations prohibited.** — Neither the legislature nor any county, city town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose."

An amendment to this section which was proposed by H. J. R. No. 35 (S.L. 1972, p. 1248) was defeated at the general election in 1972.

An amendment to this section which was

proposed by S.J.R. 110 (S.L. 1978, p. 1027) was defeated at the general election on November 7, 1978.

It was amended as proposed by S.L. 1980, p. 1030, H.J.R. No. 12, and ratified at the general election November 4, 1980 to read as it now appears.

Cited in: *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911).

ANALYSIS

Equal Access Act.
— Injunction.
Federal educational programs.
School defined.
Sectarian hospital.
Sectarian schools.

Equal Access Act.

The defendant/school's refusal of plaintiffs' request for use of the facilities of a secondary school within the defendant school district during noninstructional time for the purpose

of Bible study and discussion, fellowship, prayer and religious speech in noncurriculum related purposes is a violation of the Equal Access Act. *Hoppock ex rel. Hoppock v. Twin Falls Sch. Dist. No. 411*, 772 F. Supp. 1160 (D. Idaho 1991).

—Injunction.

The injunction requested by the plaintiffs enjoining the defendant from interfering with the rights granted to the plaintiffs by the Equal Access Act to form a student Christian club at a secondary school within the defendant school district was granted. *Hoppock ex rel. Hoppock v. Twin Falls Sch. Dist. No. 411*, 772 F. Supp. 1160 (D. Idaho 1991).

Federal Educational Programs.

Where a school board accepted federal monies under the Individuals with Disabilities Education Act, a federal educational program, the federal program preempted the state Constitution and school district was required to reimburse parents of a hearing impaired student for tuition costs of attending a parochial school. *Doolittle ex rel. Doolittle v. Meridan Joint Sch. Dist. No. 2*, 128 Idaho 805, 919 P.2d 334 (1996).

School Defined.

The word "school," as used in this section, has reference to public, free common schools, and clearly means free school system which has been generally adopted in this country, and has specific reference to district schools throughout the state established for the training and instruction of the youth of the state in primary and elementary branches of learning below the grade or rank of "academy, seminary, college, university, or other literary or scientific institution." *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911).

Sectarian Hospital.

An agreement by the Idaho Health Facilities Authority to provide financing for a hospital owned by religious sect violated this section. *Board of County Comm'rs v. Idaho Health Facilities Auth.*, 96 Idaho 498, 531 P.2d 588 (1974).

Sectarian Schools.

The framers of Idaho constitution intended the separation between the church and the state as did the framers of the United States constitution by prohibiting any appropriation of public funds to aid a church or sustain any sectarian school. *Epeldi v. Engelking*, 94 Idaho 390, 488 P.2d 860 (1971), cert. denied, 406 U.S. 957, 92-S. Ct. 2058, 32 L. Ed. 2d 343 (1972).

Opinions of Attorney General. The Idaho College Work Study Program established under chapter 44, title 33, Idaho Code, as applied to postsecondary institutions controlled by a church, sectarian or religious denomination, violates this section. OAG 89-5.

Law granting tax credit to a parent or guardian who complies with state's compulsory education law by means other than the public school system and without using public school resources by enrolling their child in a private non-sectarian school, a private sectarian school or through home schooling would probably be constitutional for such tax credit can be claimed only by the parents and the fact that §§ 63-3029A and 63-3022 which provide more direct benefit to private schools have been accepted as constitutional. OAG 97-2.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 684, 829, Vol. II, p. 1438.

Public payment of tuition, scholarship, or the like, to sectarian school. 81 A.L.R.2d 1309.

Furnishing free textbooks to sectarian school or student therein. 93 A.L.R.2d 986.

Constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of schoolbus service for private school pupils. 41 A.L.R.3d 344.

Validity, under state constitution and laws, of issuance by state or state agency of revenue bonds to finance or refinance construction projects at private religious-affiliated colleges or universities. 95 A.L.R.3d 1000.

§ 6. Religious test and teaching in school prohibited. — No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian or religious tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color. No books, papers, tracts or documents of a political, sectarian or denominational character shall be used or introduced in any schools established under the provisions of this

article, nor shall any teacher or any district receive any of the public school moneys in which the schools have not been taught in accordance with the provisions of this article.

Cross ref. Religious tests prohibited:

Normal schools, §§ 33-3113, 33-3114.

Sectarian and partisan instruction prohibited, § 33-2704.

State university, §§ 33-2806, 33-3009.

Comp. provisions: Utah. Art. 10, § 8.

Cited in: Pike v. State Bd. of Land Comm'rs, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911); Fenton v. Board of Comm'rs, 20 Idaho 392, 119 P. 41 (1911).

ANALYSIS

Equal Access Act.

—Injunction.

Equal Access Act.

The defendant/school's refusal of plaintiffs' request for use of the facilities of a secondary school within the defendant school district during noninstructional time for the purpose of Bible study and discussion, fellowship, prayer and religious speech in noncurriculum related purposes is a violation of the Equal Access Act. Hoppock ex rel. Hoppock v. Twin Falls Sch. Dist. No. 411, 772 F. Supp. 1160 (D. Idaho 1991).

—Injunction.

The injunction requested by the plaintiffs

enjoining the defendant from interfering with the rights granted to the plaintiffs by the Equal Access Act to form a student Christian club at a secondary school within the defendant school district was granted. Hoppock ex rel. Hoppock v. Twin Falls Sch. Dist. No. 411, 772 F. Supp. 1160 (D. Idaho 1991).

Collateral References. Discussion of this section in Constitutional Convention. Constitutional Convention Proceedings, Vol. I, pp. 684, 829; Vol. II, p. 1438.

Releasing public school pupils from attendance for purpose of receiving religious instruction. 2 A.L.R.2d 1371.

De facto segregation of races in public schools. 11 A.L.R.3d 780.

Erection, maintenance, or display of religious structures or symbols on public property as violation of religious freedom. 36 A.L.R.3d 1256.

Relief against school board's "busing" plan to promote desegregation. 50 A.L.R.3d 1089.

Constitutionality of regulation or policy governing prayer, meditation, or "moment of silence" in public schools. 110 A.L.R. Fed. 211.

Bible distribution or use in public schools — modern cases. 111 A.L.R. Fed. 121.

§ 7. State board of land commissioners. — The governor, superintendent of public instruction, secretary of state, attorney general and state controller shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law.

Compiler's notes. As originally adopted, this section provided as follows:

"The governor, superintendent of public instruction, secretary of state, and attorney general shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law."

It was amended, as proposed by S.L. 1909, p. 457, H.J.R. No. 15, and ratified at the general election in November, 1910, to read as follows:

"§ 7. State board of land commissioners. The governor, superintendent of public instruction, secretary of state, attorney general and state auditor shall constitute the state board of land commissioners, who shall have the direction, control and disposition of the public lands of the state, under such regulations as may be prescribed by law."

An amendment to this section which was proposed by S.J.R. No. 101 (S.L. 1971, p. 1406) was defeated at the general election in 1972.

This section was amended by S.J.R. No. 109, § 8 (S.L. 1994, p. 1493) and ratified at the general election November 8, 1994, to read as it now appears.

Sec. to sec. ref. This section is referred to in § 58-122.

Cited in: Twin Falls Salmon River Land & Water Co. v. Alexander, 260 F. 270 (D. Idaho 1919); Pierson v. State Bd. of Land Comm'rs, 14 Idaho 159, 93 P. 775 (1908); Balderston v. Brady, 17 Idaho 567, 107 P. 493 (1910); Pike v. State Bd. of Land Comm'rs, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911); Rogers v. Hawley, 19 Idaho 751, 115 P. 687 (1911); Tobey v. Bridgewood, 22 Idaho 566, 127 P. 178 (1912); Barber Lumber Co. v. Gifford, 25 Idaho 654, 139 P. 557 (1914); State ex rel.

Idaho State Park Bd. v. City of Boise, 95 Idaho 380, 509 P.2d 1301 (1973); Hutchins v. Trombley, 95 Idaho 360, 509 P.2d 579 (1973); Ritter v. Standal, 98 Idaho 446, 566 P.2d 769 (1977); Union Pac. R.R. v. Board of Tax Appeals, 103 Idaho 808, 654 P.2d 901 (1982); State ex rel. Kempthorne v. Blaine County, — Idaho —, 79 P.3d 707 (2003).

ANALYSIS

Grant of mineral rights.
 Grants of easements over state lands.
 Highest bidder protected.
 Imposition of additional duties.
 Indian reservation.
 Navigable waters.
 Public trust resources.
 Trustees or business managers.

Grant of Mineral Rights.

The State Board of Land Commissioners cannot act beyond its legislative authority; thus, even if the Board had intended to grant mineral rights to those who had obtained reinstatement of contracts to purchase school endowment lands, it had no power to do so and the State would not be bound by the negligent or unlawful acts of its officials. *Ehco Ranch, Inc. v. State ex rel. Evans*, 107 Idaho 808, 693 P.2d 454 (1984).

Grants of Easements Over State Lands.

The right of way reserved by the legislature over all state lands for water ditches constructed under the authority of the United States is a mere easement which would cease to exist when the government ceased to use the ditch for such purposes so that the legislative act is not a grant of the fee simple title to the land, within the exclusive power of the state board of land commissioners under this section. *United States v. Fuller*, 20 F. Supp. 839 (D. Idaho 1937).

Grant of an easement of right-of-way for government irrigation ditches over state lands is not a sale or disposal of land within the meaning of this section. *United States v. Fuller*, 20 F. Supp. 839 (D. Idaho 1937).

Highest Bidder Protected.

Where two or more apply to lease same lands, writ of mandate will lie to compel board to lease to highest bidder. *East Side Blaine County Livestock Ass'n v. State Bd. of Land Comm'rs*, 34 Idaho 807, 198 P. 760 (1921).

Imposition of Additional Duties.

There is nothing in the Constitution prohibiting legislature from imposing on identical persons, who compose the state land board, additional duties to be performed. *St. Joe Imp. Co. v. Laumierster*, 19 Idaho 66, 112 P. 683 (1910).

The board of land commissioners is not restricted to the specific purpose stated in this

section; therefore, the dredge and placer mining protection act in imposing duties upon the board in addition to those authorized by this section was not unconstitutional. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

Indian Reservation.

Suit by federally recognized Indian tribe brought in federal court against the state and various state agencies, and numerous state officials in their individual capacities seeking title to the banks and submerged lands of lake and various rivers and streams that were within their reservation and a declaratory judgment to establish its entitlement to the exclusive use, occupancy and right to quiet enjoyment of the submerged lands as well as a declaration of the invalidity of all Idaho statutes, ordinances, regulations, customs or usages which purport to regulate, authorize, use or affect in any way the submerged land and a permanent injunction prohibiting the state from permitting or taking any action in violation of the tribe's rights of exclusive use was barred by Idaho's Eleventh Amendment immunity since the exception of *Ex Parte Young*, 209 U.S. 123, 52 L.Ed. 714, 28 S.Ct. 441 (1908), did not apply and a state forum was available to hear such claims. *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997).

Navigable Waters.

The State of Idaho holds title to the beds of all navigable bodies of water below the natural high water mark for the use and benefit of the public; the power to direct, control and dispose of the public lands in vested in the estate board of land commissioners pursuant to § 58-101. *Kootenai Envtl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 682, 671 P.2d 1085 (1983).

Public Trust Resources.

Public trust resources may only be alienated or impaired through open and visible actions, where the public is in fact informed of the proposed action and has substantial opportunity to respond to the proposed action before a final decision is made thereon; moreover, decisions made by nonelected agencies rather than by the legislature itself will be subjected to closer scrutiny than will legislative decisionmaking. *Kootenai Envtl. Alliance, Inc. v. Panhandle Yacht Club, Inc.*, 105 Idaho 682, 671 P.2d 1085 (1983).

Trustees or Business Managers.

State board of commissioners are trustees or business managers for state in handling public lands. In matters of policy, expediency, and business interests of state, they are sole

and exclusive judges, so long as they do not run counter to provisions of law. *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914); *East Side Blaine County Livestock Ass'n v. State Bd. of Land Comm'rs*, 34 Idaho 807, 198 P. 760 (1921).

While state board has control under this section, such direction, control, and disposition must be in accordance with constitution and statutes and not otherwise. *East Side Blaine County Livestock Ass'n v. State Bd. of Land Comm'rs*, 34 Idaho 807, 198 P. 760 (1921).

The legislature has no power to divest the state board of land commissioners of the control and disposition of the public lands of the state by conferring that power on the state water conservation board. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974), and *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Under this section, the board of land commissioners has direction and control of public

lands under such regulations as may be prescribed by the legislature. *Howard v. Cook*, 59 Idaho 391, 83 P.2d 208 (1938).

Opinions of Attorney General. Since the repeal of § 57-804, effective July 1, 1985, the state auditor is authorized to classify accounts within the funds established by § 57-803 (repealed); to avoid violation of constitutional and land grant provisions, the special fund provided by § 58-140 should be consolidated in the agency asset fund so that interest will be accounted for separately for the benefit of the account. OAG 85-3.

The Idaho State Land Board need not abide by the county zoning ordinance in managing state lands for school trust purposes, as the constitutional endowment mandate has precedence; but the board, in its discretion, may look to the land use restrictions specified by the county ordinance for advice and recommendation in determining the future use and administering of these lands. OAG 91-3.

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, pp. 703, 830; Vol. II, p. 1449.

§ 8. Location and disposition of public lands. — It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to or acquired by the state by or from the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum long term financial return to the institution to which granted or to the state if not specifically granted; provided, that no state lands shall be sold for less than the appraised price. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants; provided, that not to exceed one hundred sections of state lands shall be sold in any one year, and to be sold in subdivisions of not to exceed three hundred and twenty acres of land to any one individual, company or corporation. The legislature shall have power to authorize the state board of land commissioners to exchange granted or acquired lands of the state on an equal value basis for other lands under agreement with the United States, local units of government, corporations, companies, individuals, or combinations thereof.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 8. It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all lands heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor; provided that no school lands shall be sold for less than ten (\$10) dollars per acre. No law shall ever be passed by the legislature, granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the general government, by which the amount to be derived by the sale or other disposition of such lands, shall be diminished, directly or indirectly. The legislature shall at the earliest practicable period, provide by law that the general grants of land made by Congress to the state, shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants; provided, that not to exceed twenty-five (25) sections of school lands shall be sold in any one (1) year, and to be sold in subdivisions of not to exceed one hundred and sixty (160) acres to any one individual, company or corporation."

This section was amended as proposed by S. L. 1915, p. 396, H. J. R. No. 3, and ratified at the general election in November, 1916, to read as follows:

"§ 8. **Location and disposition of public lands.** — It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor: provided, that no school lands shall be sold for less than ten dollars (\$10) per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the general government by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject

to disposal at public auction for the use and benefit of the respective objects for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants: provided, that not to exceed one hundred (100) sections of school lands shall be sold in any one (1) year, and to be sold in subdivisions of not to exceed three hundred and twenty (320) acres of land to any one individual, company or corporation."

This section was again amended, as proposed by S. L. 1935 (1st E. S.), p. 185, S. J. R. No. 1, and ratified at the general election in November, 1936, to read as follows:

"§ 8. **Location and disposition of public lands.** — It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor: provided, that no school lands shall be sold for less than ten dollars (\$10) per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants: provided, that not to exceed one hundred (100) sections of school lands shall be sold in any one (1) year, and to be sold in subdivisions of not to exceed three hundred and twenty (320) acres of land to any one individual, company or corporation. The legislature shall have power to authorize the state board of land commissioners to exchange granted lands of the state for other lands under agreement with the United States."

As amended by S. L. 1941, p. 484, S. J. R. No. 3 and ratified at the general election in 1942, this section provided as follows:

"§ 8. It shall be the duty of the state board of land commissioners to provide for the location, protection, sale or rental of all the lands

heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor; provided, that no school lands shall be sold for less than five dollars (\$5) per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such public lands, subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants: provided, that not to exceed one hundred (100) sections of school lands shall be sold in any one (1) year, and to be sold in subdivisions of not to exceed three hundred and twenty (320) acres of land to any one (1) individual, company or corporation. The legislature shall have power to authorize the state board of land commissioners to exchange granted lands to the state for other lands under agreement with the United States."

This section was amended as proposed by S. L. 1951, p. 658, H. J. R. No. 6, and ratified at the general election in November, 1952, to read as follows:

"§ 8. Location and disposition of public lands. — It shall be the duty of state board of land commissions to provide for the location, protection, sale or rental of all the lands heretofore, or which may hereafter be granted to the state by the general government, under such regulations as may be prescribed by law, and in such manner as will secure the maximum possible amount therefor; provided, that no school lands shall be sold for less than ten dollars (\$10) per acre. No law shall ever be passed by the legislature granting any privileges to persons who may have settled upon any such lands, subsequent to the survey thereof by the general government, by which the amount to be derived by the sale, or other disposition of such lands, shall be diminished, directly or indirectly. The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for

the use and benefit of the respective object for which said grants of land were made, and the legislature shall provide for the sale of said lands from time to time and for the sale of timber on all state lands and for the faithful application of the proceeds thereof in accordance with the terms of said grants: provided, that not to exceed one hundred (100) sections of school lands shall be sold in any one (1) year, and to be sold in subdivisions of not to exceed three hundred and twenty (320) acres of land to any one (1) individual, company or corporation. The legislature shall have power to authorize state board of land commissioners to exchange granted lands of the state for other lands under agreement with the United States."

It was amended as proposed by S.L. 1982, p. 935, H.J.R. No. 18 and ratified at the general election November 2, 1982 to read as it now appears.

This section was amended by S.L. 1998, p. 1366, H.J.R. No. 6, and ratified at the 1998 general election. However, the Idaho Supreme Court, in *Idaho Watersheds Project v. State Board of Land Commissioners*, 133 Idaho 64, 982 P.2d 367 (1999), barred implementation of the ballot measure.

Cross ref. Indemnity and lieu lands, selection, §§ 58-201 — 58-206.

Sec. to sec. ref. This section is referred to in §§ 58-122 and 58-310A.

Cited in: *State v. Fitzpatrick*, 5 Idaho 499, 51 P. 112 (1897); *Tobey v. Bridgewood*, 22 Idaho 566, 127 P. 178 (1912); *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914); *Idaho Power & Light Co. v. Blomquist*, 26 Idaho 222, 141 P. 1083, 1916E Ann. Cas. 282 (1914); *State ex rel. Kempthorne v. Blaine County*, — Idaho —, 79 P.3d 707 (2003).

ANALYSIS

- Adverse possession.
- Discretion of board.
- Disposition of proceeds.
- Easements.
- Exchange.
- Lease of public lands.
- Maintenance of public lands.
- Mandamus.
- Mineral rights.
- Navigable stream beds.
- Powers and duties of board.
- Public school fund.
- Reclamation.
- Sale or disposal of lands.
- Standing to challenge.
- School lands defined.
- Statute of limitations.
- Water conservation board.

Adverse Possession.

Title to school grant lands can not be acquired by adverse possession against the

state no matter how long they have been adversely occupied. *United States v. Fenton*, 27 F. Supp. 816 (D. Idaho 1939).

Title by prescription can not be acquired in school grant lands, against the state, no matter how long they have been adversely occupied. *Hellerud v. Hauck*, 52 Idaho 226, 13 P.2d 1099 (1932).

Discretion of Board.

Question as to whether or not it is expedient, wise, or the best business policy for state board of land commissioners to sell lands in fee while there is an outstanding lease on the same, and which lands can not be occupied by purchaser for a number of years after sale and purchase, is a matter solely addressed to the judgment and discretion of land board, and is vested in them by the constitution and statute, and is not a question that can be considered, reviewed, or controlled by courts. *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911).

Where contemplated action of board involves exercise of judgment and discretion, court will not interfere; if, on the other hand, action is without legal authority, court should interfere and point out legal scope within which discretion may be exercised. *East Side Blaine County Livestock Ass'n v. State Bd. of Land Comm'rs*, 34 Idaho 807, 198 P. 760 (1921).

Disposition of Proceeds.

Funds derived from various land grants under the admission act are trust funds, and are not, strictly speaking, subject to appropriation by legislature. It requires legislative action, however, in order that proceeds of such funds may become available for the purpose designated by terms of the grants. *Evans v. Van Deusen*, 31 Idaho 614, 174 P. 122 (1918).

Easements.

Grant of an easement for federal irrigation ditches over state lands is not a disposition of such lands within the meaning of this section. *United States v. Fuller*, 20 F. Supp. 839 (D. Idaho 1937).

The granting of a right of way for ditches, over lands belonging to the state, constructed by authority of the United States, is not a sale or disposal of land contemplated by this section vesting in the state board exclusive power to sell, and the legislature has the right, under this section and § 7, to provide that all state land grants contain a reservation of right of way for ditches constructed by the United States. This does not convey the fee to the land, only an easement. *United States v. Fuller*, 20 F. Supp. 839 (D. Idaho 1937).

Grant by the state of an easement for reservoir on state lands, under Const., art. 1, § 14, is not such a sale as contemplated

herein, and does not convey legal title, but leaves fee simple title to land in the state. *Idaho-Iowa Lateral & Reservoir Co. v. Fisher*, 27 Idaho 695, 151 P. 998 (1915).

Exchange.

State land board has power, under the constitution and statutes, to acquire title to any and all lands which the general government may at any time give or grant to the state, and this is true whether grant be general or special or in lieu of lands "lost" or "otherwise disposed of." *Balderston v. Brady*, 18 Idaho 238, 108 P. 742 (1910).

Relinquishment of school lands for other lands "equivalent thereto in area and value" is not a "sale" of such lands. Legislature has power to authorize exchange of lands by the state land board with the federal government. *Rogers v. Hawley*, 19 Idaho 751, 115 P. 687 (1911).

Under this section, state board of land commissioners has no authority to exchange state school lands for other lands under agreement with United States. *Newton v. State Bd. of Land Comm'rs*, 37 Idaho 58, 219 P. 1053 (1923).

Lease of Public Lands.

There is no reason the land board cannot originate offers to lease. *Allen v. Smylie*, 92 Idaho 846, 452 P.2d 343 (1969).

The Board of Land Commissioners' assertion that it had a policy of granting a lease to a prior lessee at the previous leasing rate, despite the fact that the prior lessee did not place a bid at a conflict auction, was contrary to the legislative mandate set forth in § 58-310; the rationale behind the requirement of conducting an "auction" is to solicit competing bids, with the lease being granted to the bid that would, in the discretion of the Board, "secure the maximum long term financial return" to Idaho's schools. *Idaho Watersheds Project, Inc. v. State Bd. of Land Comm'rs*, 128 Idaho 761, 918 P.2d 1206 (1996).

Where an applicant for grazing leases was deemed not to be a "qualified applicant" pursuant to the criteria set forth in § 58-310B, the applicant was adversely affected by the prescribed process and suffered a distinct and palpable injury. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 64, 982 P.2d 367 (1999).

Where an applicant for grazing leases was denied the award of a lease after a "public auction" pursuant to the facts listed in § 58-310B, it was adversely affected and suffered a distinct and palpable injury. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 64, 982 P.2d 367 (1999).

Because this section of the Idaho Constitution requires that the state consider only the return to schools in the leasing of school endowment public grazing lands, the attempt

to promote funding for schools and the state through the leasing of such lands in § 58-310B was unconstitutional. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 64, 982 P.2d 367 (1999).

There was a traceable causal connection between the claimed injury and the challenged conduct where an applicant for grazing leases was denied "qualified applicant" status based on the criteria set forth in § 58-310B. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 64, 982 P.2d 367 (1999).

Maintenance of Public Lands.

Section 58-140, providing for a special account for the maintenance, management, and protection of state owned timber, grazing, and recreation site lands, does not violate the constitutional provisions concerning the public school fund and public school endowment lands. *Moon v. State Bd. of Land Comm'rs*, 111 Idaho 389, 724 P.2d 125 (1986).

Mandamus.

Where board of land commissioners is proceeding in disregard of law, writ of mandate will lie to compel observance of legal requirements. *East Side Blaine County Livestock Ass'n v. State Bd. of Land Comm'rs*, 34 Idaho 807, 198 P. 760 (1921).

Mineral Rights.

The State Board of Land Commissioners cannot act beyond its legislative authority; thus, even if the Board had intended to grant mineral rights to those who had obtained reinstatement of contracts to purchase school endowment lands, it had no power to do so and the State would not be bound by the negligent or unlawful acts of its officials. *Ehco Ranch, Inc. v. State ex rel. Evans*, 107 Idaho 808, 693 P.2d 454 (1984).

Navigable Stream Beds.

Control of the beds of navigable streams is under the authority of the state land board and the state board of land commissioners, the bodies having general control over the public lands and navigable waters of the state. *Ritter v. Standal*, 98 Idaho 446, 566 P.2d 769 (1977).

Powers and Duties of Board.

Constitution vests control, management, and disposition of state lands in the state board of land commissioners. They are, as it were, the trustees or business managers for the state in handling these lands. *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911); *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914).

Grant of lands by the federal government to state constitutes trust fund, and state board of land commissioners is instrument created

to administer trust and is bound upon principles that are elementary to so administer it as to secure greatest measure of advantage to beneficiary. *Barber Lumber Co. v. Gifford*, 25 Idaho 654, 139 P. 557 (1914).

The duty imposed upon the board by this section is self-executing; therefore, if the legislature has not specified procedure for the board to carry out such duty, the board may adopt appropriate procedure. *Allen v. Smylie*, 92 Idaho 846, 452 P.2d 343 (1969).

Public School Fund.

The interest earned on the agency asset accounts is an integral part of the total moneys received from school lands and has to be used for the protection of the lands constituting the trust res or for school purposes in accordance with the terms of the trust established by the Constitution; therefore, crediting such interest generated by the agency asset accounts to the general fund is a violation of the terms of the school endowment grant and the Constitution. *Moon v. State Bd. of Land Comm'rs*, 111 Idaho 389, 724 P.2d 125 (1986).

Reclamation.

Statute making appropriation for reclamation of state lands for irrigation purposes and providing payment to district under proper authority is provision for protection of state lands under this section. *Gem Irrigation Dist. v. Gallet*, 43 Idaho 519, 253 P. 128 (1927).

Sale or Disposal of Lands.

State land board has no right to relinquish state's right to the 16th and 36th sections except for the minimum consideration, or more, authorized by the constitution. *Balderston v. Brady*, 17 Idaho 567, 107 P. 493, aff'd, 18 Idaho 238, 108 P. 742 (1910).

It is within power of state land board to require a person, company, or corporation that may apply to purchase state lands to enter into an agreement to bid a given price upon such lands in event they are offered for sale as a condition precedent to advertising such lands for sale. *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911).

Competition is a necessary element of an auction, and if prospective purchasers enter into an agreement with the purpose to stifle competition in bidding, and which agreement has that effect, vendor may avoid sale. *Hammond v. Alexander*, 31 Idaho 791, 177 P. 400 (1918).

Sale contemplated by this section takes place when original purchaser enters into contract of purchase with state, and that original sale can not call for more than acreage limited. *Webster-Soule Farm v. Woodmansee's Adm'r*, 36 Idaho 520, 211 P. 1090 (1922).

This section does not prohibit original purchaser from selling or assigning his interest, even though it be to one who has already purchased other lands equaling or exceeding that acreage. *Webster-Soule Farm v. Woodmansee's Adm'r*, 36 Idaho 520, 211 P. 1090 (1922).

—Standing to challenge.

Because the direct beneficiaries of the school endowment lands trust are the schools or school districts, environmental groups, challenging timber sales on school endowment trust lands approved by the State Board of Land Commissioners and the Idaho Department of Lands, lacked the required legally protected interest to establish standing as neither environmental group represented a single school or school district. *Selkirk-Priest Basin Ass'n v. State ex rel. Andrus*, 127 Idaho 239, 899 P.2d 949 (1995).

School Lands Defined.

Phrase "school lands" as used in the proviso of the next-to-last sentence, has reference only to sections 16 and 36 in each township, and does not include or embrace lands granted by congress to the state for specific educational purposes such as university, normal school, agricultural college, and scientific and other institutions of higher learning. *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911).

Statute of Limitations.

State cannot enact a limitation statute that results in impairing the efficacy of the grant of school lands by barring its right and duty to recover money loaned out of the school fund which was derived from the sale of school land. *United States v. Fenton*, 27 F. Supp. 816 (D. Idaho 1939).

Water Conservation Board.

The legislature could not, by act creating the state water conservation board, deprive the state board of land commissioners of the

right of protection, sale or rental of public lands conferred on that body by this section. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974) *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Opinions of Attorney General. Except where the Constitution limits the authority of the legislature with respect to the sale of state property as with respect to endowment and trust property, the legislature may authorize the sale of state buildings and may place the proceeds thereof in the general fund. OAG 83-2.

Since the repeal of § 57-804, effective July 1, 1985, the state auditor is authorized to classify accounts within the funds established by § 57-803 (repealed); to avoid violation of constitutional and land grant provisions, the special fund provided by § 58-140 should be consolidated in the agency asset fund so that interest will be accounted for separately for the benefit of the account. OAG 85-3.

The Idaho State Land Board need not abide by the county zoning ordinance in managing state lands for school trust purposes, as the constitutional endowment mandate has precedence; but the board, in its discretion, may look to the land use restrictions specified by the county ordinance for advice and recommendation in determining the future use and administering of these lands. OAG 91-3.

This section applies to lands granted to the state by the federal government upon admission to the union (endowment lands) and lands acquired by the state from the federal government after 1982; however, other lands acquired or owned by the state are not subject to the section. OAG 01-2.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 703, 730, 830; Vol. II, p. 1450.

§ 9. Compulsory attendance at schools. — The legislature may require by law that every child shall attend the public schools of the state, throughout the period between the ages of six and eighteen years, unless educated by other means, as provided by law.

Compiler's notes. As originally adopted this section provided as follows:

"§ 9. **Compulsory attendance at schools.** — The legislature may require by law that every child of sufficient mental and physical ability shall attend the public school throughout the period between the ages of six and eighteen years, for a time equivalent to three (3) years, unless educated by other means."

It was amended as proposed by S.J.R. No.

124 (S.L. 1972, p. 1244) and ratified at the general election on November 7, 1972 to read as it now appears.

Cited in: *Pike v. State Bd. of Land Comm'rs*, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911); *Fenton v. Board of Comm'rs*, 20 Idaho 392, 119 P. 41 (1911).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 765, 849; Vol. II, p. 1450.

Religious beliefs of parents as defense to prosecution for failure to comply with compulsory attendance law. 3 A.L.R.2d 1401.

Applicability of compulsory attendance law

covering children of a specified age, with respect to a child who has passed the anniversary date of such age. 73 A.L.R.2d 874.

§ 10. State University — Location, regents, and lands. — The location of the University of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises, and endowments, heretofore granted thereto by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university, and the control and direction of all the funds of, and appropriations to, the university, under such regulations as may be prescribed by law. No university lands shall be sold for less than ten dollars per acre, and in subdivisions not to exceed one hundred and sixty acres, to any one person, company or corporation.

Cross ref. Board of regents, § 33-2804.

Claims against state, Const., Art. 5, § 10.

Cited in: Phoenix Lumber Co. v. Regents of Univ. of Idaho, 197 F. 425 (C.C.D. Idaho 1908); Interstate Constr. Co. v. Regents of Univ. of Idaho, 199 F. 509 (D. Idaho 1912); Pike v. State Bd. of Land Comm'rs, 19 Idaho 268, 113 P. 447, 1912B Ann. Cas. 1344 (1911); Moscow Hdwe. Co. v. Regents of Univ. of Idaho, 19 Idaho 420, 113 P. 731 (1911); First Nat'l Bank v. Regents of the Univ. of Idaho, 19 Idaho 440, 113 P. 735 (1911); Union Pac. R.R. v. Board of Tax Appeals, 103 Idaho 808, 654 P.2d 901 (1982).

ANALYSIS

Bonds.

Control of funds.

Corporate existence.

Insurance claims.

Legal status.

Legislative authority.

Bonds.

A statute authorizing the board of regents to issue bonds to be amortized over a period of 30 years, from revenues accruing from the operation of a proposed infirmary is valid. Article 8, § 3 does not apply to the regents of the University of Idaho. State ex rel. Miller v. State Bd. of Educ., 56 Idaho 210, 52 P.2d 141 (1935).

Control of Funds.

Proceeds of federal land grants, direct federal appropriations, and private donations to state university are trust funds and not subject to constitutional requirement that money must be appropriated before paid out of state treasury. State ex rel. Black v. State Bd. of Educ., 33 Idaho 415, 196 P. 201 (1921).

Money obtained from federal appropriations and private donations may be expended by board of regents, subject only to conditions

and limitations provided in terms of grant. State ex rel. Black v. State Bd. of Educ., 33 Idaho 415, 196 P. 201 (1921).

In absence of conditions in appropriations, there is no obligation upon board of regents to pay to state treasurer proceeds of sale of property belonging to university, but same may be paid to treasurer of university. State ex rel. Black v. State Bd. of Educ., 33 Idaho 415, 196 P. 201 (1921).

Corporate Existence.

The independent, separate, corporate existence of the territorial board of regents of the University of Idaho was recognized, approved and confirmed by this section and the state board of education and board of regents of the university are its successor. State ex rel. Miller v. State Bd. of Educ., 56 Idaho 210, 52 P.2d 141 (1935).

Insurance Claims.

In order for the university to prevail against insurer it needed to show that it had incurred a loss or paid a claim which insurer was obligated to cover under the insurance policy; the record demonstrated that in the instant case it was Bureau of Risk Management and not the university that ultimately paid for the defense and settlement of the claim; consequently, in the absence of a showing by the university that it had suffered a loss as contemplated by the language of the insurance policy, the university had no claim upon which it could recover from insurer. State v. Continental Cas. Co., 121 Idaho 938, 829 P.2d 528 (1992).

Legal Status.

Idaho State University (ISU) was the sole insured party under disputed insurance policy; neither the State of Idaho nor Bureau of Risk Management were named insureds in the policy and they were not the same legal entity as ISU which enjoys its own indepen-

dent legal status. *State v. Continental Cas. Co.*, 121 Idaho 938, 829 P.2d 528 (1992).

Legislative Authority.

Regulations which may be prescribed by law and which must be observed by regents in supervision and control refer to methods and rules for conduct of business and accounting; such regulations must not be of character to interfere with constitutional discretion of board under authority granted by Constitution. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921).

Opinions of Attorney General. The leg-

islature may not limit the spending authority for the income from the university land endowments by simply not appropriating that money to the colleges and universities, primarily because all income from the university endowments is already appropriated to the colleges and universities as required under the terms of the congressional land grants. OAG 00-45.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 766, 849; Vol. II, p. 1450.

§ 11. Investing permanent endowment funds. — The permanent endowment funds other than funds arising from the disposition of university lands belonging to the state, may be invested in United States, state, county, city, village, or school district bonds or state warrants or other investments in which a trustee is authorized to invest pursuant to state law.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 11. The permanent educational funds, other than funds arising from the disposition of university lands belonging to the state, shall be loaned on first mortgage on improved farm lands within the state, or on state or United States bonds, under such regulations as the legislature may provide; provided, that no loan shall be made of any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings."

The section was amended, as proposed by S.L. 1899, p. 330, S.J.R. No. 12, and ratified at the general election in November, 1900, to read as follows:

"§ 11. The permanent educational funds other than funds arising from the disposition of the university lands belonging to the state, shall be loaned on first mortgage on improved farm lands within the state; state, United States, or school district bonds, or state warrants, under such regulations as the legislature may provide. Provided, That no loan shall be made of any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings."

The section was again amended, as proposed by S.L. 1927, p. 589, H.J.R. No. 10, and ratified at the general election in November, 1928, to read as follows:

"§ 11. Loaning educational funds. — The permanent educational funds other than funds arising from the disposition of university lands belonging to the state, shall be loaned on first mortgage on improved farm lands within the state, United States, county, city, village or school district bonds, or state warrants, under such regulations as the legislature may provide: provided, that no loan

shall be made on any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings."

The section was amended for a third time, as proposed by S.L. 1939, p. 670, S.J.R. No. 5, and ratified at the general election in November, 1940, to read as follows:

"§ 11. The permanent endowment funds other than funds arising from the disposition of university lands belonging to the state, shall be loaned on United States, county, city, village or school district bonds, or state warrants under such regulations as the legislature may provide."

As amended by S.L. 1945, p. 402, S.J.R. No. 4, and ratified at the general election in November 1946, this section provided as follows:

"§ 11. The permanent endowment funds other than funds arising from the disposition of university funds belonging to the state, shall be loaned on United States, state, county, city, village or school district bonds or state warrants, under such regulations as the legislature may provide."

The section was amended as proposed by S.J.R. No. 4 (S.L. 1968 (2nd Ex. Sess.) p. 69), and ratified at the general election in November 1968, to read as follows:

"§ 11. Loaning permanent endowment funds. — The permanent endowment funds other than funds arising from the disposition of university lands belonging to the state, shall be loaned on United States, state, county, city, village, or school district bonds or state warrants or on such other investments as may be permitted by law under such regulations as the legislature may provide."

This section was amended by S.L. 1998, p. 1368, H.J.R. No. 8, and ratified at the general

election on November 3, 1998, to read as it now appears.

Cross ref. Investment board, investment of permanent funds, §§ 57-715 — 57-727.

Cited in: State v. Fitzpatrick, 5 Idaho 499, 51 P. 112 (1897).

ANALYSIS

Convertible bonds.

Investment of funds.

"Loan".

School district bonds.

State bonds.

Statute of limitations.

Submission of amendment.

Convertible Bonds.

The members or ex officio member of the endowment fund investment board of the state were not in violation of writ of mandate and prohibition issued by the court previously on holding that convertible bonds could be purchased but that conversion privilege could not be exercised when they purchased convertible bonds without exercising the conversion privilege. *Engelking v. Investment Bd.*, 93 Idaho 739, 471 P.2d 594 (1970).

The purchase of corporate bonds by the state endowment fund investment board pursuant to § 57-722 was not unconstitutional whether such bonds were convertible or not, provided that the right of conversion was not exercised. *Engelking v. Investment Bd.*, 93 Idaho 739, 471 P.2d 594 (1970).

Investment of Funds.

This section supports the indication along with Idaho Const., Art. 9, § 3 that there is a constitutional mandate that the legislature is responsible for the investment of the permanent endowment funds. *Moon v. Investment Bd.*, 96 Idaho 140, 525 P.2d 335 (1974).

"Loan".

The word "loan" in Const., Art. 9, § 11, must not be so loosely construed as to include investment in stocks, therefore subsections (6) and (8), of § 57-722 are unconstitutional and subsections (3), (4), (5) and (7) are constitutional as involving only loans in which repayment of principal can be guaranteed. *Engelking v. Investment Bd.*, 93 Idaho 217, 458 P.2d 213 (1969).

The word "loan" as used in this section and as extended in scope by the 1968 amendment, must carry the meaning that there must be a guarantee of full repayment of principal and interest, and there must be an unconditional promise to repay the principal sum originally lent. *Engelking v. Investment Bd.*, 93 Idaho 217, 458 P.2d 213 (1969).

The loaning of credit clause of Idaho Const., art. 8, § 2, may be reconciled with the amendment to Idaho Const., Art. 9, § 11, precisely because it prohibits loaning of state's credit,

and does not prohibit the loaning of state's funds. *Engelking v. Investment Bd.*, 93 Idaho 217, 458 P.2d 213 (1969).

School District Bonds.

Tax anticipation notes are not bonds of school district within the meaning of this section as amended in 1900 and they are prohibited by § 3 and this section. *Girard v. Diefendorf*, 54 Idaho 467, 34 P.2d 48 (1934).

State Bonds.

The 1927 amendment to this section did not exclude or eliminate state bonds from among the authorized investments of permanent educational funds. *Parsons v. Diefendorf*, 53 Idaho 219, 23 P.2d 236 (1933).

The omission of the word, "state," from the enumeration of securities that might be accepted on the loaning of the permanent endowment funds, other than funds arising from a disposition of university lands, could not be held to be a mistake on the part of the legislature, when the language used in a proposed amendment was not ambiguous or uncertain, notwithstanding that the legislature subsequently enacted statutes in terms contrary to or contradictory of the constitutional amendment, which was submitted to and adopted by the people. *State ex rel. Kinyon v. Enking*, 62 Idaho 649, 115 P.2d 97 (1941).

Statute of Limitations.

Statute of limitations applicable to state would not apply to suit brought by state as trustee of school funds to foreclose a mortgage securing a loan of such trust funds. *United States v. Fenton*, 27 F. Supp. 816 (D. Idaho 1939); *State v. Peterson*, 61 Idaho 50, 97 P.2d 603 (1939).

The statute of limitations is not operative as to the state when it is acting in a trustee capacity in holding school funds. *State v. Peterson*, 61 Idaho 50, 97 P.2d 603 (1939).

Submission of Amendment.

Where the only subject dealt with by the legislature in a proposed constitutional amendment was the class and character of securities that should be required on the loaning of permanent endowment funds, other than funds arising from the disposition of university lands, the submission of a single amendment enumerating all of the acceptable securities was all that was required, rather than the submission of as many proposals as there were kinds of securities named in original section to be amended. *State ex rel. Kinyon v. Enking*, 62 Idaho 649, 115 P.2d 97 (1941).

Where the 1998 constitutional amendments to amend Const. Art. IX, §§ 3 and 11 were related as part of a common scheme for funding education, the joint submission of the

amendments to the electorate on a single ballot was constitutional, and the subsequently enacted Idaho School Bond Guaranty Act and related statutory amendments were upheld. *State Endowment Fund Inv. Bd. v. Crane*, 135 Idaho 667, 23 P.3d 129 (2001).

Opinions of Attorney General. Subdivision (3)(b) (since 1990 amendment subdivision (3)) of § 57-722, which authorizes investment in money market mutual funds whose assets are limited to obligations of the United States or any agency or instrumentality thereof, is constitutional, provided that the money market mutual fund unconditionally guarantees full repayment of principal and interest as required by this section, and the state does not directly or indirectly become a stockholder in any association or corporation. OAG 85-4.

Investments which the legislature may authorize are limited to loans in which there is a guarantee of full repayment of principal as well as interest. OAG 88-1.

Amendment of § 57-722 to permit securities lending would not violate Idaho Const.,

art. 9, § 11. OAG 88-1.

The sale of covered call options would not violate the constitutional requirement that endowment funds shall be loaned; the option would simply be an agreement establishing acceptable terms of sale of the bond during the period of the option; therefore, if authorized by the legislature, the endowment board could use covered call options. OAG 88-1.

Endowment investments must include an unconditional promise to repay the principal sum originally lent; therefore, options should be sold only if the exercise price and premium would be sufficient to repay the sum originally lent. OAG 88-1.

Call options could not be sold on securities which are not owned by the endowment fund; such transactions by themselves are not loans, but speculative investments of a type not permitted by fiduciaries. OAG 88-1.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 773, 861; Vol. II, pp. 1287, 1331, 1451.

Article X

PUBLIC INSTITUTIONS

SECTION.

1. State to establish and support institutions.
2. Seat of government.
3. Seat of government — Change in location.
4. Property of territory becomes property of state.

SECTION.

5. State prisons — Control over.
6. [Repealed.]
7. Change in location of institutions.

§ 1. State to establish and support institutions. — Educational, reformatory, and penal institutions, and those for the benefit of the insane, blind, deaf and dumb, and such other institutions as the public good may require, shall be established and supported by the state in such manner as may be prescribed by law.

Cited in: *Hickman v. Idaho State Sch. & Hosp.*, 339 F. Supp. 463 (D. Idaho 1972); *State ex rel. Cromwell v. Panzeri*, 76 Idaho 211, 280 P.2d 1064 (1955).

ANALYSIS

Appropriation for college.
Expenses of insane patient.

Appropriation for College.

Session Laws 1955, ch. 277 appropriating the sum of \$100,000 to apply on Dormitory Revenue Bond Issue of \$375,000 issued by board of trustees of Northern Idaho College of Education in 1950 under provisions of Educational Bond Act, S.L. 1935 (1st E.S.), ch. 55, since college had been closed since 1951 due to failure of legislature to appropriate funds,

was not unconstitutional on the ground that it was an attempt to loan the credit of the state for a private purpose, since it was designed and intended for a public purpose, to wit, payment of a college building in furtherance of educational objectives of the state. *Davis v. Moon*, 77 Idaho 146, 289 P.2d 614 (1955).

Expenses of Insane Patient.

Statute authorizing public welfare commissioner (now commissioner of public health) to collect expenses for care of inmate in insane institution, if inmate has sufficient funds, was authorized under constitution. *State ex rel. Macey v. Johnson*, 50 Idaho 363, 296 P. 588 (1931).

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 127,

434, 451; Vol. II, pp. 1429, 1604.

Discussion of this section in constitutional

convention. Constitutional Convention Proceedings, Vol. I, p. 434; Vol. II, p. 1429.

§ 2. Seat of government. — The seat of government of the state of Idaho shall be located at Boise City for twenty years from the admission of the state, after which time the legislature may provide for its relocation, by submitting the question to a vote of the electors of the state at some general election.

Collateral References. Discussion of this section in constitutional convention. Consti-

tutional Convention Proceedings, Vol. I, p. 435; Vol. II, p. 1430.

§ 3. Seat of government — Change in location. — The legislature may submit the question of the location of the seat of government to the qualified voters of the state at the general election, then next ensuing, and a majority of all the votes upon said question cast at said election shall be necessary to determine the location thereof. Said legislature shall also provide that in case there shall be no choice of location at said election, the question of choice between the two places for which the highest number of votes shall have been cast shall be submitted in like manner to the qualified electors of the state at the next general election.

Collateral References. Discussion of this section in constitutional convention. Consti-

tutional Convention Proceedings, Vol. I, p. 438; Vol. II, p. 1433.

§ 4. Property of territory becomes property of state. — All property and institutions of the territory, shall, upon the adoption of the constitution, become the property and institutions of the state of Idaho.

Collateral References. Discussion of this section in constitutional convention. Consti-

tutional Convention Proceedings, Vol. I, p. 438; Vol. II, p. 1534.

§ 5. State prisons — Control over. — The state legislature shall establish a nonpartisan board to be known as the state board of correction, and to consist of three (3) members appointed by the governor, one (1) member for two (2) years, one (1) member for four (4) years, and one (1) member for six (6) years. After the appointment of the first board the term of each member appointed shall be six (6) years. This board shall have the control, direction and management of the penitentiaries of the state, their employees and properties, and of adult probation and parole, with such compensation, powers, and duties as may be prescribed by law.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 5. State prison commissioners. — The governor, secretary of state and attorney general shall constitute a board to be known as the state prison commissioners, and shall have the control, direction and management of the penitentiaries of the state. The governor shall be chairman, and the board shall appoint a warden, who may be removed at pleasure. The warden shall have the power to

appoint his subordinates, subject to the approval of the said board."

It was amended, as proposed by S.L. 1941, p. 485, S.J.R. No. 5, and ratified at the general election in November, 1942, to read as it now appears.

Cross ref. State board of correction, creation, powers and duties defined, §§ 20-201 — 20-245.

Probation and parole of prisoners, §§ 20-219 — 20-223, 20-234.

Sec. to sec. ref. This section is referred to in § 20-201.

Cited in: Mahaffey v. State, 87 Idaho 228, 392 P.2d 279 (1964); Burge v. State, 90 Idaho 473, 413 P.2d 451 (1966); State v. Reese, 98 Idaho 347, 563 P.2d 405 (1977); State v. Gee, 107 Idaho 991, 695 P.2d 376 (1985); Flores v. State, 109 Idaho 182, 706 P.2d 71 (Ct. App. 1985); Mellinger v. Idaho Dep't of Cors., 114 Idaho 494, 757 P.2d 1213 (Ct. App. 1988); Smith v. Idaho Dep't of Cor., 128 Idaho 768, 918 P.2d 1213 (1996).

ANALYSIS

Custody classification levels.

Board.

—Meetings.

—Powers and duties.

Management of penitentiary.

Parole.

Custody Classification Levels.

A pending probation violation claim by the State of Washington did not vest the Idaho courts with any special authority to consider the impact of that claim on defendant's custody classification level established by the Department of Corrections. Swain v. State, 122 Idaho 918, 841 P.2d 448 (Ct. App. 1992).

Board.

—Meetings.

Board of state prison commissioners (now state board of correction), created by this section, may meet at such times as they deem necessary; a majority of the officers constituting board may hold meeting and transact any business which board is authorized to transact, and it is not necessary for them to give notice to member of board who is, at time of calling and holding the meeting, beyond jurisdiction of the state. Ackley v. Perrin, 10 Idaho 531, 79 P. 192 (1905).

—Powers and Duties.

Idaho Code § 20-223, granting the board of correction the power to establish rules and regulations regarding parole, was enacted within the power of the legislature to prescribe the duties and powers of the state board of correction and the department of adult probation and parole. Standlee v. State, 96 Idaho 849, 538 P.2d 778 (1975).

When the Commission of Pardons and Parole is exercising the powers and duties delegated to it by the Board of Corrections in matters involving parole and probation, it is

exercising powers granted to the Board under this section. Therefore, it is not an "agency" within the meaning of the Administrative Procedures Act, and § 67-5215 is inapplicable to a parole decision of the Commission of Pardons and Parole. Carman v. State, Comm'n of Pardons & Parole, 119 Idaho 642, 809 P.2d 503 (1991).

Management of Penitentiary.

Since this section confers on board of prison commissioners (now state board of correction) management and control of penitentiary, legislature has no power to take from board such management and control, or to make any rules and regulation for government of board which would in any way interfere with the efficient management and control of the institution. Ackley v. Perrin, 10 Idaho 531, 79 P. 192 (1905).

The state board of corrections is the body which has been expressly granted the control, direction and management of the penitentiary of the state of Idaho. The courts do not have jurisdiction to supervise matters of ordinary prison discipline. Mahaffey v. State, 87 Idaho 228, 392 P.2d 279 (1964).

Parole.

The limitation on parole found in § 19-2513A (repealed) was not violative of this section. State v. Rawson, 100 Idaho 308, 597 P.2d 31 (1979).

The current statutory sentencing scheme in Idaho allows the court to sentence a convicted felon to the custody of the Board of Corrections for an indeterminate period of time under § 19-2513 or for a fixed period of time under § 19-2513A (repealed), and only under the fixed term sentence is the offender precluded from obtaining parole, but the Board of Corrections continues to have exclusive control over adult probation and parole in those situations where the legislature has provided by law that parole is available. State v. Rawson, 100 Idaho 308, 597 P.2d 31 (1979).

When the Commission of Pardons and Parole is exercising the parole function, as distinguished from its commutation and pardon powers, it is exercising powers "delegated to it by the board." Carman v. State, Comm'n of Pardons & Parole, 119 Idaho 642, 809 P.2d 503 (1991).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 456; Vol. II, p. 1534.

§ 6. Directors of insane asylum. [Repealed]

Compiler's notes. As adopted this section provided as follows:

"§ 6. Directors of insane asylum. — There shall be appointed by the governor,

three (3) directors of the asylum for the insane, who shall be confirmed by the senate. They shall have the control, direction and management of the said asylums under such

regulations as the legislature shall provide and hold their offices for a period of two (2) years. The directors shall have the appointment of the medical superintendent who shall appoint the assistants with the approval of the directors."

This section was repealed, as proposed by S.L. 1929, p. 693, H.J.R. No. 5, and ratified at the general election in November, 1930, effective March 15, 1931.

§ 7. Change in location of institutions. — The legislature for sanitary reasons may cause the removal to more suitable localities of any of the institutions mentioned in section one of this article.

Cited in: *Dumas v. Bryan*, 35 Idaho 557, 207 P. 720 (1922).

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 451; Vol. II, p. 1534.

Article XI

CORPORATIONS, PUBLIC AND PRIVATE

SECTION.

1. Certain grants and charters invalidated.
2. Special charters prohibited.
3. Revocation and alteration of charters.
4. Cumulative voting.
5. Regulation and control of railroads.
6. Equal transportation rights guaranteed.
7. Acceptance of Constitution by corporations.
8. Right of eminent domain and police power reserved.
9. Increase in capital stock.
10. Regulation of foreign corporations.

SECTION.

11. Constructing railroad in city or town.
12. Retroactive laws favoring corporations prohibited.
13. Telegraph and telephone companies.
14. Consolidation of corporations with foreign corporations.
15. Transfer of franchises.
16. Term "corporation" defined.
17. Liability of stockholders — Dues.
18. Combinations in restraint of trade prohibited.

§ 1. Certain grants and charters invalidated. — All existing charters or grants of special or exclusive privileges, under which the corporations or grantees shall not have organized or commenced business in good faith at the time of the adoption of this Constitution, shall thereafter have no validity.

Cited in: *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

ANALYSIS

City charters.

State water conservation board.

City Charters.

Sections 1 and 2 of this article clearly confer power on the legislature to provide for organization and classification of cities and to confer powers on them subject only to the limitations found in art. 8, § 3. *Reynard v. City of Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

State Water Conservation Board.

If the state water conservation board be

held to be a nongovernmental unit, the act creating it violates this section, as it is not a municipal, charitable, educational, penal or reformatory corporation and the legislature can not create a private corporation by special law. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974); *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 100, 805; Vol. II, pp. 1462, 1605.

§ 2. Special charters prohibited. — No charter of incorporation shall be granted, extended, changed or amended by special law, except for such municipal, charitable, educational, penal, or reformatory corporations as are or may be, under the control of the state; but the legislature shall provide by general law for the organization of corporations hereafter to be created: provided, that any such general law shall be subject to future repeal or alteration by the legislature.

Cross ref. See note to art. 11, § 1. *Reynard v. Caldwell*, 53 Idaho 62, 21 P.2d 527 (1933).

Cited in: *Wiggin v. City of Lewiston*, 8 Idaho 527, 69 P. 286 (1902); *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978); *State & Idaho State Univ. v. Continental Cas. Co.*, 126 Idaho 178, 879 P.2d 1111 (1994).

ANALYSIS

City charters.
City of Boise.
City of Lewiston.
Corporations — stock regulations.
Educational corporation.
Health facilities.
Joint stock companies.
Special legislation.
State insurance fund.
Water conservation board.
Water resource board.

City Charters.

Special charters of cities can be amended only by special acts. General laws relating to purely municipal affairs of local concerns to the government of cities do not apply to cities operating under special charters without the consent of their electors. *Hoffer v. City of Lewiston*, 59 Idaho 538, 85 P.2d 238 (1938).

A general law relating to municipal affairs of local concern to the government of cities will not automatically amend or alter special charters, under which cities have been organized prior to the adoption of the Constitution. *Hoffer v. City of Lewiston*, 59 Idaho 538, 85 P.2d 238 (1938).

Where a special municipal charter prescribes the qualification of jurors in action to which it is a party, such charter provision will prevail over general law respecting the qualification of trial jurors, but where the court follows the general law instead of the charter provision, this will not be held as prejudicial error, since the municipality has no vested right to have a particular juror try its case. *Hoffer v. City of Lewiston*, 59 Idaho 538, 85 P.2d 238 (1938).

The state legislature is empowered to amend a special municipal charter without a vote of the people within the municipality, but such charter can be amended only by special legislative enactment. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

City of Boise.

Under this and art. 3, § 16, art. 12, § 1, and art. 21, § 2, the Boise City charter, which was received from the territorial legislature, is subject to amendment only by a special act of the state legislature specifically referring to the charter, both in the title and in the body of the act. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Provision of Boise City's special charter as to county collecting city taxes and compensation therefor controls over general statutes on the same subjects. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Where Boise City's charter provided that city taxes should be levied by the mayor and council and assessed by the city assessor, collected by the city tax collector, the state legislature is not inhibited from transferring these duties to the county officers of Ada County, but such county officers, in the discharge of such duties, merely act as agents for the city. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

City of Lewiston.

Under provisions of the Constitution, special charter of the city of Lewiston may be amended by a special law enacted for that specific purpose, or by a general law which declares a state policy concerning police regulations or in regard to matters affecting the state at large. Ordinances providing for pavement of streets, construction of sewers, and levying assessments to pay therefor are matters of local concern, and special charters of cities of this state in regard to such local matters can be amended only by special law. *Mix v. Board of Comm'rs*, 18 Idaho 695, 112 P. 215, 32 L.R.A. (n.s.) 534 (1910).

Corporations — Stock Regulations.

A corporation may contract by a provision in its articles or by-laws that stock is nonassessable, and, when it certifies that shares represented by a certificate are nonassessable, such clause becomes a contract between the corporation and the stockholder and the corporation can not levy an assessment in violation of the contract. *Whicher v. Delaware Mines Corp.*, 52 Idaho 304, 15 P.2d 610 (1932); *A.C. Frost & Co. v. Coeur d'Alene Mines Corp.*, 60 Idaho 491, 92 P.2d 1057 (1939).

When a corporation issues stock certificates as "nonassessable," this clause becomes a part of the contract and the corporation has no power to levy an assessment thereon in violation of the contract. *A.C. Frost & Co. v. Coeur d'Alene Mines Corp.*, 60 Idaho 491, 92 P.2d 1057 (1939).

Assuming, but not deciding, that this section gives the legislature power to authorize corporations to change "nonassessable" to assessable stock without impairing the obligation of a contract that the stock should be nonassessable, that could not possibly vest a corporation with authority to commit fraud by inducing investors to purchase its stock upon the false representation that its shares were "nonassessable." *A.C. Frost & Co. v. Coeur d'Alene Mines Corp.*, 60 Idaho 491, 92 P.2d 1057 (1939).

Educational Corporation.

Legislature may extend, amend, or change by special law any educational corporation charter existing at time of the adoption of the Constitution. *Howard v. Independent Sch. Dist. No. 1*, 17 Idaho 537, 106 P. 692 (1910).

Health Facilities.

The Health Facilities Authority created pursuant to § 39-1441 is not a corporation within the meaning of this section or art. 3, § 19, since the authority cannot change its own structure, is under public control and is restricted to a narrow range of permissible public goals. *Board of County Comm'rs v. Idaho Health Facilities Auth.*, 96 Idaho 498, 531 P.2d 588 (1975).

Joint Stock Companies.

Provision of this section, which requires legislature to provide by general law for organization of corporations, is directed exclusively to legislature, and is not operative without legislative action; provision does not prevent individuals from organizing a joint stock company having attributes different from those of ordinary corporations. *Spotswood v. Morris*, 12 Idaho 360, 85 P. 1094, 6 L.R.A. (n.s.) 665 (1906).

This section has no application to voluntary joint stock company which has no franchise of incorporation, and which exercises no powers or privileges of a corporation which are not possessed by individuals or partnerships. *Spotswood v. Morris*, 12 Idaho 360, 85 P. 1094, 6 L.R.A. (n.s.) 665 (1906).

Special Legislation.

This section prohibits enactment of local or special laws on subjects therein enumerated, but leaves legislature master of its own discretion in passing special laws on subjects not prohibited by the Constitution. *Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

Session Laws 1925, chs. 89, 90, pp. 124, 128, amending S.L. 1923, ch. 211, p. 343 (§§ 3-401 — 3-420), are not unconstitutional as creating corporation by special act. Before such act is held unconstitutional, it must clearly appear that it infringes some constitutional provision. *In re Edwards*, 45 Idaho 676, 266 P. 665 (1928).

State Insurance Fund.

The state insurance fund is not a corporation within the meaning of art. 3, § 19 of the Constitution forbidding special laws creating any corporation nor within the meaning of this section against the granting of a charter by special law. *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

Water Conservation Board.

The legislature is empowered to create a board, commission, bureau, or department, such as a state water conservation board, attempted to be created by Session Laws 1935 (1st E.S.), ch. 60 (unconstitutional), and arm it with administration and governmental powers, such as power to make surveys and investigations as to water supply, waste and loss, and methods of conservation, but this is the extent of the power to so create. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974); *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Water Resource Board.

The water resource board is not a corporation within the meaning of this section or art. 3, § 19 since it cannot change its own structure, is under public control, and is restricted to a narrow range of permissible public goals. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. I, p. 806.

§ 3. Revocation and alteration of charters. — The legislature may provide by law for altering, revoking, or annulling any charter of incorporation, existing and revocable at the time of the adoption of this Constitution, in such manner, however, that no injustice shall be done to the incorporators.

Amendment of Municipal Charters.

Charter of the city of Lewiston, which antedates the Constitution, may be amended by legislature. *Wiggin v. City of Lewiston*, 8 Idaho 527, 69 P. 286 (1902).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 810.

§ 4. Cumulative voting. — The Legislature shall not prohibit corporations from electing directors by cumulative voting.

Compiler's notes. As originally adopted this section provided as follows:

"§ 4. **Shares of stock — How voted.** — The legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors, multiplied by the number of his shares of stock, shall equal, or to distribute them on the same principle among as many candidates as he shall think fit, and such directors shall not be elected in any other manner."

An amendment to this section which was proposed by S. J. R. No. 8 (S. L. 1967, p. 1571) was defeated in the general election in 1968.

It was amended as proposed by H. J. R. No. 63 (S. L. 1972, p. 1250) and ratified at the general election on November 7, 1972, to read as follows:

"§ 4. **Shares of stock — How voted.** — The legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote in person or by proxy for the number of shares of voting or common stock owned by him, for as many persons as there

are directors or managers to be elected, or to cumulate said shares, and give one candidate as many votes as the number of directors, multiplied by the number of his shares of stock, shall equal, or to distribute them on the same principle among as many candidates as he shall think fit, and such directors shall not be elected in any other manner. In the issue, advertisement, and sale of non-voting shares of stock provision shall be made for clearly identifying the non-voting character of the shares by clearly stating in the largest print on the certificate, on the prospectus or offer for sale, and in the record and receipt of the transaction the words "non-voting."

S.L. 1982, p. 930, S.J.R. No. 110 proposed that § 4 of Article XI be repealed and that Art. XI be amended by the addition of a new section 4. Such proposal was ratified at the general election, November 2, 1982, and the section was adopted to read as it now appears.

Cross ref. Voting rights, §§ 30-1-32 — 30-1-34.

Cited in: *Olympia Mining Co. v. Kerns*, 13 Idaho 514, 91 P. 92 (1907); *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 814.

§ 5. Regulation and control of railroads. — All railroads shall be public highways, and all railroad, transportation, and express companies shall be common carriers, and subject to legislative control, and the legislature shall have power to regulate and control by law, the rates of charges for the transportation of passengers and freight by such companies or other common carriers, from one point to another in the state. Any association or corporation organized for the purpose, shall have the right to construct and operate a railroad between any designated points within this state, and to connect within or at the state line, with railroads of other states and territories. Every railroad company shall have the right with its road, to intersect, connect with, or cross any other railroad, under such regulations as may be prescribed by law, and upon making due compensation.

Cross ref. Common carrier defined under public utility law, § 61-113.

Operation of railroads, §§ 62-401 — 62-419.

Comp. provisions: Utah. Art. 12, § 15.

Cited in: *Blackwell Lumber Co. v. Empire Mill Co.*, 28 Idaho 556, 155 P. 680, 1918A Ann. Cas. 189 (1916); *In re Union Pac. R.R.*, 81 Idaho 300, 340 P.2d 1103 (1959).

ANALYSIS

Compulsory service.

Discontinuance of service.

Discretion of public utilities commission.

Railroad as highway.

Rates applicable to counties.

Rule of general application.

Substitution of mixed trains.

Compulsory Service.

Railway company, if it is a public service corporation, has right of eminent domain, and if it has refused to carry saw logs of others or transport their freight, it may be compelled to do so. *Connolly v. Woods*, 13 Idaho 591, 92 P. 573 (1907).

In mandamus proceedings to compel defendant to operate railroad as common carrier, legal status is question of fact to be determined by courts. *Codd v. McGoldrick Lumber Co.*, 46 Idaho 256, 267 P. 439 (1928).

Mere fact that logging railroad has exercised right of eminent domain does not constitute it public utility where it has never held itself out as common carrier. *Codd v. McGoldrick Lumber Co.*, 48 Idaho 1, 279 P. 298, 67 A.L.R. 580 (1929).

Discontinuance of Service.

In considering the question of whether or not a railroad should be compelled to continue the operation of a branch line passenger service, the entire revenues of the whole system are to be taken into account, and not merely the direct return of the branch line itself, which is sought to be abandoned. In *re Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

No fixed rule can be applied in determining whether or not a railroad is entitled to discontinue a portion of its service and substitute in lieu thereof a different class of service, and each case must be considered in the light of all of its facts. In *re Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

The public utilities commission is justified and is under duty, on an application by a railroad to abandon passenger service on branch lines and to substitute in lieu thereof mixed trains consisting of passenger and baggage cars on existing freight trains, to consider the inconvenience the public would suffer by reason of such change in service by transmitting mail, express and baggage, as well as passengers on the same train. In *re Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

In determining whether patronage justifies expense of operation of passenger trains on a

railroad's branch line, it is proper to consider expense of furnishing passenger service, but that is not the most important question, and the controlling question is the necessity and reasonableness of the service to the public. In *re Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

If passenger service furnished by railroad is in all respects adequate, efficient, just, and reasonable as required by statute, it is neither just nor reasonable to impose an unreasonable and unjust economic loss on the railroad, and, indirectly on the public, to require unnecessary and useless expenditures. In *re Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

Discretion of Public Utilities Commission.

The public utilities commission is vested with discretionary power in acting on a railroad's application to discontinue a portion of its service and, in the absence of abuses of such power, the Supreme Court will not be justified in setting aside the commission's order. In *re Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

Railroad as Highway.

Section must be given a practical and reasonable construction of what was probably in the minds of the framers of the Constitution rather than an unusual interpretation. The word "highways" as used here and in art. 3, § 19 did not include railroads in the category with roads and streets so as to make railroads subject to gasoline tax imposed on users of highways by running autos thereon. *Oregon S.L.R.R. v. Pfost*, 53 Idaho 559, 27 P.2d 877 (1933).

Rates Applicable to Counties.

Although the public utilities act vests sole jurisdiction over common carrier's rates in the public utilities commission, that body does not have sole power to establish rates for carriage of property for county, under this provision, in view of a section of that act providing that counties are not bound by rates fixed under it. *Boise Valley Traction Co. v. Ada County*, 38 Idaho 350, 222 P. 1035 (1923).

Rule of General Application.

All railroads are public highways and common carriers, irrespective of intention of the corporation. *McLean v. District Court*, 24 Idaho 441, 134 P. 536, 1915D Ann. Cas. 542 (1913).

This section provides that all railroads shall be public highways and shall be common carriers subject to legislative control. *Codd v. McGoldrick Lumber Co.*, 46 Idaho 256, 267 P. 439 (1928).

It matters not what intention of corporation

is or may be, a railroad is made common carrier by Constitution, and if it refuses to perform any of duties it owes public, it may be compelled to do so. *Codd v. McGoldrick Lumber Co.*, 46 Idaho 256, 267 P. 439 (1928).

This section declaring all railroads public highways does not apply to logging railroads, which are not common carriers. *Codd v. McGoldrick Lumber Co.*, 48 Idaho 1, 279 P. 298, 67 A.L.R. 580 (1929).

Substitution of Mixed Trains.

On application by a railroad to abandon passenger service on a branch line and to substitute in lieu thereof mixed trains consisting of passenger and freight trains, it is necessary to consider the limited public use of passenger service, expense, and net loss to the railroad in the operation of passenger trains, available passenger service furnished by another railroad paralleling the railroad on which passenger trains were sought to be discontinued, bus service, and paved high-

ways, paralleling the applicant's line. In re *Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

By the running of a mixed train consisting of freight and passenger cars, a railroad does not discharge its duties to the public of furnishing transportation to passengers under all circumstances and in all cases. In re *Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

Inasmuch as a railroad is bound to carry both passengers and freight, and its duties and liabilities to passengers riding on freight and passenger trains are different, a railroad is obliged to furnish and operate passenger trains separate from its freight trains for accommodation of passengers, if economic loss is not unjust and unreasonable. In re *Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, pp. 821, 869.

§ 6. Equal transportation rights guaranteed. — All individuals, associations, and corporations, similarly situated, shall have equal rights to have persons or property transported on and over any railroad, transportation, or express route in this state, except that preference may be given to perishable property. No undue or unreasonable discrimination shall be made in charges or facilities for transportation of freight or passengers of the same class, by any railroad, or transportation, or express company, between persons or places within this state; but excursion or commutation tickets may be issued and sold at special rates, provided such rates are the same to all persons. No railroad, or transportation, or express company shall be allowed to charge, collect, or receive, under penalties which the legislature shall prescribe, any greater charge or toll for the transportation of freight or passengers, to any place or station upon its route or line, than it charges for the transportation of the same class of freight or passengers to any more distant place or station upon its route or line within this state. No railroad, express, or transportation company, nor any lessee, manager, or other employee thereof, shall give any preference to any individual, association, or corporation, in furnishing cars or motive power, or for the transportation of money or other express matter.

Cited in: In re *Union Pac. R.R.*, 81 Idaho 300, 340 P.2d 1103 (1959).

ANALYSIS

Classification.
Discontinuance of service.
Undue discrimination.

Classification.

This provision of the constitution authorizes legislature to make classification of passengers on railroads, and different rates and privileges for separate classes provided that unreasonable discrimination shall not be

made between passengers of the same class.. (Erroneously cited Art. 2), *Abrams v. P. & I.N. Co.*, 2 P.U.C.I. 137, 141-2.

Discontinuance of Service.

In considering the question of whether or not a railroad should be compelled to continue the operation of a branch line passenger service, the entire revenues of the whole system are to be taken into account, and not merely the direct return of the branch line itself, which is sought to be abandoned. In re *Union Pac. R.R.*, 64 Idaho 597, 134 P.2d 1073 (1943).

No fixed rule can be applied in determining

whether or not a railroad is entitled to discontinue a portion of its service and substitute in lieu thereof a different class of service, and each case must be considered in the light of all of its facts. In re Union Pac. R.R., 64 Idaho 597, 134 P.2d 1073 (1943).

The public utilities commission is justified and is under duty, on an application by a railroad to abandon passenger service on branch lines and to substitute in lieu thereof mixed trains consisting of passenger and baggage cars on existing freight trains, to consider the inconvenience the public would suffer by reason of such change in service by transmitting mail, express and baggage, as well as passengers on the same train. In re Union Pac. R.R., 64 Idaho 597, 134 P.2d 1073 (1943).

In determining whether patronage justifies expense of operation of passenger trains on a railroad's branch line, it is proper to consider expense of furnishing passenger service, but that is not the most important question, and the controlling question is the necessity and reasonableness of the service to the public. In re Union Pac. R.R., 64 Idaho 597, 134 P.2d 1073 (1943).

If passenger service furnished by railroad is in all respects adequate, efficient, just, and reasonable as required by statute, it is nei-

ther just nor reasonable to impose an unreasonable and unjust economic loss on the railroad, and, indirectly on the public, to require unnecessary and useless expenditures. In re Union Pac. R.R., 64 Idaho 597, 134 P.2d 1073 (1943).

Undue Discrimination.

Where railroad grants exclusive privilege to steamboat company of receiving and discharging freight and passengers at a dock, being the only means of approach from waterway, same as undue and unreasonable discrimination. *Coeur D'Alene & St. Joe Transp. Co. v. Ferrell*, 22 Idaho 752, 128 P. 565, 43 L.R.A. (n.s.) 965 (1912).

It was intended to prohibit unequal rates for substantially the same service as well as a difference between persons, localities, or classes of traffic. An unexplained difference in rates between main and branch lines is a prima facie case of discrimination, and burden is upon defendant to justify. (Erroneously cited Art. 2), *Peterson v. Oregon Short Line R.R.*, 2 P.U.C.I. 113.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 890; Vol. II, pp. 1061, 1458.

§ 7. Acceptance of Constitution by corporations. — No corporation other than municipal corporations in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, without first filing in the office of the secretary of state an acceptance of the provisions of this Constitution in binding form.

Comp. provisions: Utah. Art. 12. § 2.

Application of Section.

The provisions of this section requiring corporations existing at the time of the adoption of the constitution to file acceptance of its provisions do not apply to irrigation districts.

Reynolds Irrigation Dist. v. Sproat, 65 Idaho 617, 151 P.2d 773 (1944).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1062, 1064, 1073, 1076.

§ 8. Right of eminent domain and police power reserved. — The right of eminent domain shall never be abridged, nor so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the police powers of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.

Cross ref. Eminent domain, right to exercise power, procedure, §§ 7-701 — 7-720.

Comp. provisions: Utah. Art. 12, § 11.

Cited in: Sandpoint Water & Light Co. v.

City of Sandpoint, 31 Idaho 498, 173 P. 972, 1918F L.R.A. 1106 (1918); *Federal Reserve Bank v. Citizens' Bank & Trust Co.*, 53 Idaho 316, 23 P.2d 735 (1933).

ANALYSIS

Issuance of revenue bonds.
 Lease of state property.
 Police power.
 Urban renewal projects.

Issuance of Revenue Bonds.

Revenue bonds issued by the water resource board do not create an unconstitutional state debt or liability because the state does not place its faith or credit behind the payment of the bonds and prospective purchasers are given notice that there is no recourse against any public entity. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Lease of State Property.

The lease of state owned property to a private party does not constitute the issuance of a franchise. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Police Power.

Contracts of a drainage district stand on the same footing as those of individuals and the state can not, under the police power of the state, abolish the obligations of contracts between district bondholders and the land owners. *Straus v. Ketchen*, 54 Idaho 56, 28 P.2d 824 (1933).

Like any other exercise of the police power, a regulation abridging or restricting the free-

dom of contract or the right to engage in any lawful business in a lawful manner must be reasonable and must reasonably tend to accomplish or promote the protection and welfare of the public. Regulations of the insurance industry which are arbitrary or capricious and which unreasonably restrict or interfere with the liberties of the citizen, without accomplishing or promoting a legitimate object of the police power, are invalid violations of the fundamental law. *Gem State Mut. Life Ins. Ass'n v. O'Connell*, 79 Idaho 427, 320 P.2d 329 (1957).

Urban Renewal Projects.

The proposed use of property for urban renewal projects, which plaintiff sought to condemn pursuant to the Idaho Urban Renewal Law (§§ 50-2001 — 50-2018) constituted a public use as required by the Idaho Constitution and various Idaho statutes, even though the majority of buildings would be constructed and occupied by private commercial enterprises, and the taking of property for such purpose would not be a denial of property without due process. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1062.

§ 9. Increase in capital stock. — No corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons, holding a majority of the stock of the class to be increased, first obtained at a meeting, held pursuant to such notice as is provided by the legislature.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 9. Increase in capital stock. — No corporation shall issue stocks or bonds, except for labor done, services performed, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons, holding a majority of the stock, first obtained at a meeting, held after at least thirty days' notice given in pursuance of law."

It was amended as proposed by H.J.R. No. 10 (S.L. 1965, p. 958) and ratified at the general election on November 8, 1966, to read as it now appears.

ANALYSIS

Consideration for stock.

Increase of stock.

Issuance.

— Less than par value.

— Violation of law.

Liability for stock manipulation.

Payment of preexisting indebtedness.

Property defined.

Consideration for Stock.

If there be consideration of some sort and the transaction redounds to the benefit of the corporation, it need not be equal in value to the stock bought to be "adequate" consideration. *Savic v. Kramlich*, 52 Idaho 156, 12 P.2d 260 (1932).

Where shareholder's wife invested nothing into the corporation in exchange for the 5,000 shares issued to her, those shares were void. *Belt v. Belt*, 106 Idaho 426, 679 P.2d 1144 (Ct. App. 1984).

Increase of Stock.

Transaction whereby subscription is made for corporate stock which is issued without a payment of anything of value therefor does not constitute increase of stock or of corporate indebtedness within meaning of this section. *Jensen v. Aikman*, 32 Idaho 261, 181 P. 525 (1919).

Issuance.

Usually a share of a corporation represents the right to participate, equally with other shares, in control of a corporation, in the profits of the corporation, and, upon dissolution, in the corporate assets; however, to gain this status, the shares of the corporation must be issued in compliance with the applicable provisions of the Idaho Constitution and the Idaho Code. *Belt v. Belt*, 106 Idaho 426, 679 P.2d 1144 (Ct. App. 1984).

—Less Than Par Value.

It would be harsh and unfair to deprive a shareholder of the entire interest in a corporation reflected by the issuance of stock for less than par value; the better rule is that only the excess stock, issued over a payment of less than par value, is void. *Belt v. Belt*, 106 Idaho 426, 679 P.2d 1144 (Ct. App. 1984).

—Violation of Law.

The rule that shares issued in violation of constitutional or statutory provisions are void

should apply to disputes between shareholders or between shareholders and the corporation. *Belt v. Belt*, 106 Idaho 426, 679 P.2d 1144 (Ct. App. 1984).

Liability for Stock Manipulation.

There is both constitutional and statutory (§ 30-124) liability for stock manipulations and where complaint alleges facts sufficient to bring party within terms of such provisions, it is sufficient. *Grimsmoe v. Kendrick*, 42 Idaho 491, 247 P. 746 (1926).

Payment of Preexisting Indebtedness.

As to whether corporation may issue its bonds secured by mortgage for payment of preexisting indebtedness or for a pledge as collateral for preexisting indebtedness, was mooted, but not decided. *Union Trust & Sav. Bank v. Idaho Smelting & Ref. Co.*, 24 Idaho 735, 135 P. 822 (1913).

Property Defined.

Property includes both real and personal property, and personal property includes money, goods, chattels, things in action, and evidences of debt. (Erroneously cited Art. 2), *Meholin v. Carlson*, 17 Idaho 742, 107 P. 755, 134 Am. St. R. 286 (1910).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1062.

§ 10. Regulation of foreign corporations. — No foreign corporation shall do any business in this state without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served; and no company or corporation formed under the laws of any other country, state, or territory, shall have or be allowed to exercise or enjoy, within this state any greater rights or privileges than those possessed or enjoyed by corporations of the same or similar character created under the laws of this state.

Cross ref. Foreign corporations, §§ 30-1-106 — 30-1-126.

Cited in: *Smith v. Alberta & British Columbia Exploration or Reclamation Co.*, 9 Idaho 399, 74 P. 1071 (1903); *Valley Lbr. & Mfg. Co. v. Driessel*, 13 Idaho 662, 93 P. 765, 15 L.R.A. (n.s.) 299, 13 Ann. Cas. 63 (1907); *Union Stock Yards Nat'l Bank v. Bolan*, 14 Idaho 87, 93 P. 508, 125 Am. St. R. 146 (1908); *War Eagle Consol. Mining Co. v. Dickie*, 14 Idaho 534, 94 P. 1034 (1908); *Kiesel v. Bybee*, 14 Idaho 670, 95 P. 20 (1908); *Tarr v. Western Loan & Sav. Co.*, 15 Idaho 741, 99 P. 1049, 21 L.R.A. (n.s.) 707 (1909); *Keating v. Keating Mining Co.*, 18 Idaho 660, 112 P. 206 (1909); *Dickens-West Mining Co. v. Crescent Mining & Milling Co.*, 26 Idaho 153, 141 P. 566 (1914); *Mountain Home Redi-Mix v. Conner Homes, Inc.*, 91 Idaho 612, 428 P.2d 744 (1967).

ANALYSIS

Actions or suits.
Doing business.
— In general.
— Proof of qualification.
Equality with domestic corporations.
Insurance company.
Interstate commerce.
Legislative enactment.
Provision self-acting.
Real estate.
— Mortgages.
Single transaction.
Unincorporated associations.
Withdrawal of corporation.

Actions or Suits.

Prosecution of action in this state for collection of debt contracted in another state, and

payable in that state, does not constitute doing business in this state. *Bonham Nat'l Bank v. Grimes Pass Placer Mining Co.*, 18 Idaho 629, 111 P. 1078 (1910).

Objection to right of foreign corporation to sue in this state must be raised by special demurrer or answer, or objection is waived. *Hoffstater v. Jewell*, 33 Idaho 439, 196 P. 194 (1921); *Marshall Field & Co. v. Houghton*, 35 Idaho 653, 208 P. 851 (1922); *Farmers' & Mechanics' Bank v. Gallaher Inv. Co.*, 43 Idaho 496, 253 P. 383 (1927).

Foreign corporation complying with this provision will not be considered "out of the state" for purpose of filing claims against estate of deceased person. *American Sur. Co. v. Blake*, 45 Idaho 159, 261 P. 239 (1927).

Ordinarily, the bringing and prosecuting of a suit by a corporation is not doing business in the state. *Continental Assurance Co. v. Ihler*, 53 Idaho 612, 26 P.2d 792 (1933); *Perry v. Reynolds*, 63 Idaho 457, 122 P.2d 508 (1942).

As to sufficiency of denial in an answer to raise the issue of a foreign corporation's right to do business in the state, see *Perry v. Reynolds*, 63 Idaho 457, 122 P.2d 508 (1942).

If complaint discloses that plaintiff is a foreign corporation it must either go ahead and show that it has complied with law entitling it to do business in the state or that transaction sued on did not arise from doing business in the state. *Land Dev. Corp. v. Cannaday*, 74 Idaho 233, 258 P.2d 976 (1953).

Qualification to do business within the state by a foreign corporation prior to trial sufficed to allow such foreign corporation to maintain an action on contract executed prior to the time the corporation had so qualified. *Young Elec. Sign Co. v. Capps*, 94 Idaho 518, 492 P.2d 57 (1971).

Doing Business.

—In General.

Preservation of corporate rights as owners of property, and not in the way of conducting trade, is not doing business within the state to bring them within the rule. *Von Baumbach v. Sargent Land Co.*, 242 U.S. 503, 37 S. Ct. 201, 61 L. Ed. 460 (1917).

Amount or volume of business done is immaterial. Constitution prohibits doing of any business in state without compliance with its provisions. *Hoffstater v. Jewell*, 33 Idaho 439, 196 P. 194 (1921).

Foreign corporations doing business in the state of Idaho defined. *Largilliere Co. v. McConkie*, 36 Idaho 229, 210 P. 207 (1922).

Agreement of foreign corporation to take charge of business of local corporation, together with acts of such corporation in conducting business for several days, and bringing suit to avoid assignment for benefit of creditors constitutes "doing business within

state." *Adjustment Bureau v. Conley*, 44 Idaho 148, 255 P. 414 (1927).

Foreign corporation acting through an attorney in fact in Idaho, and taking a note and mortgage on Idaho land, is doing business within this section and can not sue to foreclose unless it was authorized to do business when the mortgage was executed. *Peoples-Pittsburgh Trust Co. v. Diebolt*, 52 Idaho 208, 13 P.2d 656 (1932).

Foreign corporation was not doing business in the state where it made a loan to a resident of the state secured by chattel and real estate mortgage on property in the state where entire loan was consummated outside the state. *Land Dev. Corp. v. Cannaday*, 74 Idaho 233, 258 P.2d 976 (1953).

—Proof of Qualification.

Matter of whether or not foreign corporation has qualified to do business in state is matter of public record, and can not be properly alleged upon information and belief. *Largilliere Co. v. McConkie*, 36 Idaho 229, 210 P. 207 (1922).

Equality with Domestic Corporations.

Foreign corporation has same right to contract for right to dump debris from mining operations into stream as domestic corporation. *Gross v. Bunker Hill & Sullivan Mining & Concentrating Co.*, 45 F.2d 651 (D. Idaho 1930).

When foreign corporation has complied with these requirements it has all rights and privileges and is subject to laws applicable to domestic corporations, but enjoys no greater rights and privileges. *Earl Fruit Co. v. State*, 40 Idaho 426, 233 P. 518 (1925).

Foreign corporation is not compelled to do business within state but, upon compliance with constitutional and statutory provisions, it becomes subject to same laws and statutes of limitation as domestic corporations. *American Sur. Co. v. Blake*, 45 Idaho 159, 261 P. 239 (1927).

Contract whereby foreign corporation, doing business within state, implying establishment of a known place of business under this section, calling for interest in excess of legal rate was usurious, and making the note payable in another state to control the rate of interest can not be construed as an innocent intent, as a resident corporation will not be permitted to make such a contract. *United States Bldg. & Loan Ass'n v. Lanzarotti*, 47 Idaho 287, 274 P. 630 (1929).

Insurance Company.

A foreign insurance company's compliance with the statute requiring such companies to designate the state commissioner of finance as their agent for service of process before transacting business in the state is a compliance with this provision. *Union Cent. Life Ins.*

Co. v. Rahn, 63 Idaho 243, 118 P.2d 717 (1941).

A foreign corporation beginning business in state accepts constitutional and statutory provision, and is bound by any legal proceedings taken thereunder the same as a domestic corporation would be. *Hunter v. Merger Mines Corp.*, 67 Idaho 115, 170 P.2d 800 (1946).

The Idaho courts had jurisdiction to order election of board of directors of a foreign corporation doing business within state whose sole purpose was the merger and operation of mines within state. *Hunter v. Merger Mines Corp.*, 67 Idaho 115, 170 P.2d 800 (1946).

Interstate Commerce.

Provisions of this section prohibiting foreign corporation "doing business in this state" without first filing its articles of incorporation and designating an agent do not apply to a foreign corporation doing interstate business or a corporation that sells an article in another state to a citizen of this state, and which thereafter finds it necessary to resort to the court of this state for collection of the debt; nor do they apply to foreign corporation which bids in real estate at execution sale for collection of judgment due to corporation, and which judgment arises out of an interstate transaction. *Foore v. Simon Piano Co.*, 18 Idaho 167, 108 P. 1038 (1910).

Legislative Enactment.

This provision of Constitution was carried into effect by enactment of § 30-501 (repealed). *American Sur. Co. v. Blake*, 45 Idaho 159, 261 P. 239 (1927).

Provision Self-Acting.

This provision is self-acting and self-operative in so far as it requires facts therein enumerated to exist at time foreign corporation begins to do business within the state, and it requires such corporations to subject themselves to the jurisdiction and laws of this state before they are given recognition or legal existence within its borders. *Katz v. Herrick*, 12 Idaho 1, 86 P. 873 (1906).

Foreign corporation is prohibited by the Constitution from doing any business within this state until it has complied with provisions thereof. *Katz v. Herrick*, 12 Idaho 1, 86 P. 873 (1906); *Miller v. Donovan*, 13 Idaho 735, 92 P. 991 (1907); *Kiesel v. Bybee*, 14 Idaho 670, 95 P. 20 (1908); *Morris-Roberts Co. v. Mariner*, 24 Idaho 788, 135 P. 1166 (1913); *Donaldson v. Thousand Springs Power Co.*, 29 Idaho 735, 162 P. 334 (1916); *Hoffstater v. Jewell*, 33 Idaho 439, 196 P. 194 (1921).

The law is mandatory and must be substantially complied with. *Morris-Roberts Co. v. Mariner*, 24 Idaho 788, 135 P. 1166 (1913).

Real Estate.

The mere taking of title to land does not constitute doing business in the state. *Bruun*

v. Hanson, 103 F.2d 685 (9th Cir.), cert. denied, 308 U.S. 571, 60 S. Ct. 86, 84 L. Ed. 479 (1939).

Foreign corporations not complying with laws of Idaho relative to such corporations can not take title to real property or transfer the same. *Donaldson v. Thousand Springs Power Co.*, 29 Idaho 735, 162 P. 334 (1916); *Moody v. Morris-Roberts Co.*, 38 Idaho 414, 226 P. 278 (1923).

Foreign corporation can not take or hold title to realty prior to complying with this section and § 30-505 (repealed), but conveyance to trustee for its benefit prior to doing business is not void. *Donaldson v. Thousand Springs Power Co.*, 29 Idaho 735, 162 P. 334 (1916).

Trustee or agent of a corporation can no more take title under the statute than corporation, and conveyance to such trustee is void. *Donaldson v. Thousand Springs Power Co.*, 29 Idaho 735, 162 P. 334 (1916).

The ownership of realty, in and of itself, by a foreign corporation, is not doing business within the meaning of this section, even though contracts and conveyances with respect thereto are made and are to be performed without the state. *Perry v. Reynolds*, 63 Idaho 457, 122 P.2d 508 (1942).

—Mortgages.

Prosecution of action in this state for foreclosure of a real estate mortgage, transferred and assigned to plaintiff in another state before maturity, and for which plaintiff comes into courts of the state for the sole and only purpose of maintaining such action, does not constitute doing business within this state, within meaning of the Constitution. *Diamond Bank v. Van Meter*, 19 Idaho 225, 113 P. 97 (1911).

Foreclosure of mortgage in state, where execution, payment, and entire transaction which mortgage secured was transacted in another state, is not doing business within state where mortgage was foreclosed. *Largilliere Co. v. McConkie*, 36 Idaho 229, 210 P. 207 (1922).

Insurance company making loans through an agent in Idaho who looks after and protects the security is doing business in the state. A mortgage made in favor of such company which has not complied with the statute and with this section is void and can not be foreclosed. *John Hancock Mut. Life Ins. Co. v. Girard*, 57 Idaho 198, 64 P.2d 254 (1936).

Under this section and §§ 30-501, 30-502 and 30-505 (all repealed), a "mortgage" was a "conveyance" and was invalidated when made to a foreign corporation not qualified under the law to do business in the state. *John Hancock Mut. Life Ins. Co. v. Girard*, 57 Idaho 198, 64 P.2d 254 (1936).

Single Transaction.

Where corporation is doing that for which it was created, transactions which it performs can not be said to be single or isolated; neither are they casual or incidental. *Hoffstater v. Jewell*, 33 Idaho 439, 196 P. 194 (1921).

A single isolated transaction by a foreign corporation does not constitute "doing business" within the meaning of this section. *Perry v. Reynolds*, 63 Idaho 457, 122 P.2d 508 (1942).

Unincorporated Associations.

This section prohibits authorizing unincorporated associations, doing business as such in other states, to write insurance in Idaho when domestic associations are denied such privilege. *Intermountain Lloyds v. Diefendorf*, 51 Idaho 304, 5 P.2d 730 (1931).

A Lloyds insurance association in which the moving cause back of the plan is the limited liability enjoyed by the individuals creating it, a privilege not possessed by individuals and partnerships domiciled in Idaho, is within the prohibition of this section. *Intermountain Lloyds v. Diefendorf*, 51 Idaho 304, 5 P.2d 730 (1931).

Withdrawal of Corporation.

There is no provision for withdrawal of corporation that wishes to go out of business entirely or suspend business for a time. *Earl Fruit Co. v. State*, 40 Idaho 426, 233 P. 518 (1925).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1062.

§ 11. Constructing railroad in city or town. — No street, or other railroad, shall be constructed within any city, town, or incorporated village without the consent of the local authorities having the control of the street or highway proposed to be occupied by such street or other railroad.

ANALYSIS

Annexation of railroad land.
Construed.

Annexation of Railroad Land.

Where railroad when constructed was not within the boundaries of defendant village the provision is not applicable to give village the right to annex railroad land. *Oregon Short Line R.R. v. Village of Chubbuck*, 83 Idaho 62, 357 P.2d 1101 (1960).

Construed.

The Constitution and laws of this state clearly confer right upon railway company to

construct its railway within a city or village upon complying with the laws of the state, and also grant power and authority to cities and villages to pass ordinances granting right of way to railway company to lay its track and use, as a right of way, streets within said city or village, and in all such cases both city or village and railway company must comply with provisions of the law and also ordinances of such village. *Trueman v. Village of St. Maries*, 21 Idaho 632, 123 P. 508 (1912).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1062.

§ 12. Retroactive laws favoring corporations prohibited. — The legislature shall pass no law for the benefit of a railroad, or other corporation, or any individual, or association of individuals retroactive in its operation, or which imposes on the people of any county or municipal subdivision of the state, a new liability in respect to transactions or considerations already past.

Cited in: *Federal Reserve Bank v. Citizens' Bank & Trust Co.*, 53 Idaho 316, 23 P.2d 735 (1933); *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936).

ANALYSIS

Action for medical malpractice.
Assessments of improvement districts.
Construction of contract.
Initiation of right.
Ratification of acts of state agencies.
Retroactive laws.

Retroactive liability for torts.
Taking title to land not "doing business."

Action for Medical Malpractice.

Sections 6-1012 and 6-1013 did not retroactively establish a different burden of proof that must be met to sustain an action for medical malpractice, thereby violating this section by providing: (1) that the standard of practice and the failure of the medical person to meet the standard must be established by expert testimony and (2) that the standard of care shall be that of the local community since

both were the standards before the enactment of the statutes and the legislature merely codified already existing case law. *LePelley v. Grefenson*, 101 Idaho 422, 614 P.2d 962 (1980).

Even assuming that utilization of *res ipsa loquitur* was now precluded by the statutory language of a section which stated that in a claim for damages in a medical malpractice action, the "plaintiff must, as an essential part of his or her case in chief, affirmatively prove by direct expert testimony . . .," the section did not retroactively change the burden on plaintiffs in a malpractice action involving an unsuccessful inner ear operation since the doctrine of *res ipsa loquitur* would not apply to such case even under the prior case law. *LePelley v. Grefenson*, 101 Idaho 422, 614 P.2d 962 (1980).

Assessments of Improvement Districts.

Section (3) of Laws 1976, c. 160, which attempts to validate all invalid improvement district assessments previously levied, violates the provision in this section prohibiting the imposition of laws imposing new pecuniary liabilities in respect to transactions or considerations already past. *Butler v. City of Blackfoot*, 98 Idaho 854, 574 P.2d 542 (1978).

Construction of Contract.

Section 41-1806 cannot be used to determine liability in a cause where both the loss involved and the issuance of the policy occurred prior to its enactment. *Coburn v. Fireman's Fund Ins. Co.*, 86 Idaho 415, 387 P.2d 598 (1963).

Initiation of Right.

One who initiates right on state property, subsequent to existing right, does so subject to such existing right, and substitution of procedure for perfection of such existing rights or extension of time for their perfection does not necessarily contravene any constitutional provision. *Big Wood Canal Co. v. Chapman*, 45 Idaho 380, 263 P. 45 (1927).

Ratification of Acts of State Agencies.

Legislature, acting for and on behalf of the state as representative of the people, has the right to approve and ratify action of state land board in transaction wherein legislature would have had, in the first place, power to authorize the doing of the thing which land board has done and which it is proposed to ratify, adopt, and confirm, even though act when performed by land board was without and in excess of powers then conferred upon such board. *Rogers v. Hawley*, 19 Idaho 751, 115 P. 687 (1911).

Curative acts validating contracts of commissioner of public works for construction, improvement and repair of public highways through cities were enacted in furtherance of a general policy, for the benefit of the public, and were not passed for the benefit of any

corporation and do not violate this section. *Powell v. McKelvey*, 56 Idaho 291, 53 P.2d 626 (1935).

Retroactive Laws.

A law is not retroactive because part of the factual situation to which it is applied occurred prior to its enactment, rather a law is retroactive only when it operates upon transactions which have been completed, or upon rights which have been acquired, or upon obligations which have existed prior to its passage. *Frisbie v. Sunshine Mining Co.*, 93 Idaho 169, 457 P.2d 408 (1969).

Retroactive Liability for Torts.

Though the state may assume responsibility for the torts of its officers and agents by a law of general application operating prospectively, it can not assume responsibility for such tort committed in the past, by a special retroactive legislative act. *State ex rel. Walton v. Parsons*, 58 Idaho 787, 80 P.2d 20 (1935).

Taking Title to Land Not "Doing Business."

The action of an Arizona corporation in taking title to Idaho mining claims does not constitute "doing business" in Idaho, within the meaning of this section, and it was not necessary for such corporation to comply with the Constitution and laws of the state of Idaho with respect to foreign corporations doing business therein. *Bruun v. Hanson*, 103 F.2d 685 (9th Cir.), cert. denied, 308 U.S. 571, 60 S. Ct. 86, 84 L. Ed. 479 (1939).

We do not determine that the legislature could or could not make an appropriation in satisfaction of a moral obligation where some public policy would be served and the relief to the individual merely incidental. However, in the instant case the act in question is a special act, retroactive in effect, for the relief of private individuals and for a private purpose and not for a public purpose. We hold that the act is unconstitutional as violative of the implied limitations of the Constitution forbidding a gift by the legislature of public money; and is retroactive, in violation of art. 11, § 12. *State ex rel. Walton v. Parsons*, 58 Idaho 787, 80 P.2d 20 (1935).

Opinions of Attorney General. Section 63-3027A, as amended by S.L. 1991, ch. 115, § 1, p. 243, affecting computation of Idaho income taxes paid by nonresidents, retroactive to January 1, 1985, will apparently withstand a challenge made under the federal due process clause and contract clauses of the federal and state constitutions and will also probably withstand scrutiny under art. 11, § 12, of the Idaho Constitution; however, a separation of powers challenge will likely succeed. OAG 91-2.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1062, 1076.

§ 13. Telegraph and telephone companies. — Any association or corporation, or the lessees or managers thereof, organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph or telephone within this state, and connect the same with other lines; and the legislature shall by general law of uniform operation provide reasonable regulations to give full effect to this section.

Cross ref. Telegraph, telephone and electric power corporations, §§ 62-801 — 62-805.

ANALYSIS

Highway right of way.
Reasonable regulations.

Highway Right of Way.

Portion of the highway right of way not used for actual road purposes was not forfeited to the owner of the fee title, and the telephone company had clear legal right to place and maintain their facilities upon the highway right of way. *Mountain States Tel. & Tel. Co. v. Kelly*, 93 Idaho 226, 459 P.2d 349 (1969), cert. denied, 297 U.S. 42, 90 S. Ct. 816, 25 L. Ed. 2d 44 (1970).

Reasonable Regulations.

Under § 62-701 the legislature has provided reasonable regulations for the construction and maintenance of telephone and telegraph lines along highways, however such use does not confer a right but is permissive only so long as such use does not incommode the public. *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1957).

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. II, p. 1103.

§ 14. Consolidation of corporations with foreign corporations. — If any railroad, telegraph, express, or other corporation, organized under any of the laws of this state, shall consolidate, by sale or otherwise, with any railroad, telegraph, express, or other corporation, organized under any of the laws of any other state or territory, or of the United States, the same shall not thereby become a foreign corporation, but the courts of this state shall retain jurisdiction over the part of the corporate property within the limits of the state in all matters that may arise, as if said consolidation had not taken place.

Cross ref. Merger or consolidation of corporations, §§ 30-1-71 — 30-1-77.

Collateral References. Discussion of this

section in constitutional convention. *Constitutional Convention Proceedings*, Vol. II, p. 1104.

§ 15. Transfer of franchises. — The legislature shall not pass any law permitting the leasing or alienation of any franchise so as to release or relieve the franchise or property held thereunder from any of the liabilities of the lessor or grantor, or lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

Cross ref. Sale of franchise on execution, §§ 30-201 — 30-206.

Cited in: *Childs v. Neitzel*, 26 Idaho 116, 141 P. 77 (1914); *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936).

ANALYSIS

Appointment of receiver.
"Debts" defined.
Preference of creditors.

Appointment of Receiver.

Under this section, court may appoint a receiver to manage property which has been leased, pending litigation involving rights of water users in leased irrigation company. *Idaho Fruit Land Co. v. Great W. Beet Sugar Co.*, 17 Idaho 273, 105 P. 562 (1909).

"Debts" Defined.

Debt sought to be recovered under this section must appear to have been "contracted or incurred in the operation, use or enjoy-

ment" of the franchise or privileges of such corporation. *Union Trust & Sav. Bank v. Idaho Smelting & Ref. Co.*, 24 Idaho 735, 135 P. 822 (1913).

Preference of Creditors.

Where judgment was recovered against corporation for tort, plaintiff was not entitled to have the same allowed as a preferred claim against corporation's assets in insolvency as against rights of prior mortgage bondholders, under this section. *Sundles v. Idaho-Oregon Light & Power Co.*, 218 F. 698 (D. Idaho 1914).

On receivership a judgment is a preferred claim against proceeds of sale over claims of bondholders under mortgage which covers after-acquired property, and over claims of

other creditors. *Towle v. Great Shoshone & Twin Falls Water Power Co.*, 232 F. 733 (D. Idaho 1916), *aff'd sub nom.*, *American Waterworks & Elec. Co. v. Towle*, 245 F. 706 (9th Cir. 1917).

Judgment obtained for personal injuries inflicted by corporation becomes a lien against franchise and property of such corporation in hands of purchaser or grantee, and is superior to any subsequent bonds, mortgages, or encumbrances placed thereon by such purchaser or grantee. *Seymour v. Boise R.R.*, 24 Idaho 7, 132 P. 427 (1913).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1106.

§ 16. Term "corporation" defined. — The term "corporation" as used in this article, shall be held and construed to include all associations and joint stock companies having or exercising any of the powers or privileges of corporations not possessed by individuals or partnerships.

Cross ref. Corporation classified and terms defined, § 30-1-2.

Cited in: *Edwards v. Belknap*, 66 Idaho 639, 166 P.2d 451 (1946).

ANALYSIS

"Corporation".
Unincorporated associations.

"Corporation".

Constitutional definition of term "corporation" is not general definition, but only definition of term as used in this section. *State v. Cosgrove*, 36 Idaho 278, 210 P. 393 (1922).

This section clearly recognizes existence of corporations in usual and ordinary sense, as well as of associations and joint stock companies, but for particular purposes of article, it modifies and enlarges scope of term. *State v. Cosgrove*, 36 Idaho 278, 210 P. 393 (1922).

Unincorporated Associations.

Unincorporated association or joint stock company may be formed by individuals for the purchase of a single tract of real estate, title to which may be taken in trustee, and articles of agreement may provide that the death of a

shareholder shall not result in dissolution of the association, and that either or any of the officers or shareholders shall not sell or dispose of any property of the association without concurrence of shareholders; such association is not a corporation under the Constitution or statutes, but is a form of special partnership. *Spotswood v. Morris*, 12 Idaho 360, 85 P. 1094, 6 L.R.A. (n.s.) 665 (1906).

Lloyds plan of insurance associations can not qualify as an insurer in this state as it has none of the corporate attributes prerequisite for domestic carriers under this section. *Intermountain Lloyds v. Diefendorf*, 51 Idaho 304, 5 P.2d 730 (1931).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1106.

Common law or Massachusetts trusts. 10 A.L.R. 887; 31 A.L.R. 851; 35 A.L.R. 502; 46 A.L.R. 169; 58 A.L.R. 518; 71 A.L.R. 890.

Estoppel of defendant to deny plaintiff's corporate existence by filing counterclaim or cross action against it. 51 A.L.R.2d 1449.

§ 17. Liability of stockholders — Dues. — Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by him.

Cited in: *Washington Brewers Inst. v. United States*, 137 F.2d 964 (9th Cir. 1943); *Weil v. Defenbach*, 31 Idaho 258, 170 P. 103 (1918).

ANALYSIS

Corporation as an entity.
Liability of shareholder in fiduciary capacity.

Stock assessments.
 Stockholder liability.
 Unity of interest.

Corporation as an Entity.

Generally, a corporation will be regarded as an entity separate from its stockholders; that is, as a legal or juristic personality created and existing by law. *Hayhurst v. Boyd*, 50 Idaho 752, 300 P. 895 (1931).

Liability of Shareholder in Fiduciary Capacity.

Since statutory liability predicated upon misconduct by a director or officer is completely unrelated and irrelevant to ownership of stock in the corporation, whenever shareholders elect to actively participate in the corporate affairs as officers or directors, they will be responsible for their actions as officers or directors. *Minich v. Gem State Developers, Inc.*, 99 Idaho 911, 591 P.2d 1078 (1979).

Stock Assessments.

This section relates to and limits personal liability of stockholder, but in no way limits power of corporation to make assessments upon stock fully paid up, and to subject such stock to sale in default of the payment of such assessment. *Wall v. Basin Mining Co.*, 16 Idaho 313, 101 P. 733, 22 L.R.A. (n.s.) 1013 (1909).

Last clause of this section does not exempt stockholder from payment of his debt arising out of an unpaid subscription. *Feehan v. Kendrick*, 32 Idaho 220, 179 P. 507 (1918).

This section relates to and limits the personal liability of a stockholder but it in no way limits the power of the corporation to assess fully-paid stock and to sell it to discharge corporate obligations. But where the certificate issued bears the inscription: "fully-paid and nonassessable," such shares, when fully paid, can not be assessed. *A.C. Frost & Co. v. Coeur d'Alene Mines Corp.*, 60 Idaho 491, 92 P.2d 1057 (1939).

Stockholder Liability.

This section does not authorize legislature to impose double liability upon stockholders of bank. *Fralick v. Guyer*, 36 Idaho 648, 213 P. 337 (1922).

Provision that "in no case shall any stockholder be individually liable in any amount over or above the amount of stock owned by

him" means that when face value of stock has been paid to corporation there can be added thereto no personal liability of stockholder in any amount. *Fralick v. Guyer*, 36 Idaho 648, 213 P. 337 (1922).

Liabilities of stockholders in bank or other corporation to corporation's creditors is limited to unpaid stock subscriptions. *Shattuck v. Ellis*, 49 Idaho 330, 288 P. 162 (1930).

A stockholder is not personally liable for acts of corporation's servants, with which he is not personally connected. *Hayhurst v. Boyd*, 50 Idaho 752, 300 P. 895 (1931).

One who has contracted with a corporation as such, accepted its corporate deed to real estate, and given a deed to the corporation is estopped to deny the existence of the corporation and to hold the officers and stockholders of the corporation personally liable for corporate obligations. *Jolley v. Idaho Sec., Inc.*, 90 Idaho 373, 414 P.2d 879 (1966).

Whether the stockholder owns one share or all the shares, no liability inures merely as the result of that stock ownership. *Ross v. Coleman Co.*, 114 Idaho 817, 761 P.2d 1169 (1988).

Unity of Interest.

To disregard corporate entity, there must be unity of interest and ownership between corporation and individual, sought to be held personally liable for judgment against corporation. *Hayhurst v. Boyd*, 50 Idaho 752, 300 P. 895 (1931).

Majority ownership of stock is insufficient to make such stockholder liable, or to disregard the corporate entity and thereby make him liable. *Hayhurst v. Boyd*, 50 Idaho 752, 300 P. 895 (1931).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1107.

Promise by stockholder to pay debt of corporation. 35 A.L.R.2d 906.

Enforceability in another jurisdiction of personal liability of stockholders for debts of corporation whose organization is incomplete or defective. 42 A.L.R.2d 659.

Stockholder's personal conduct of operations or management of assets as factor justifying disregard of corporate entity. 46 A.L.R.3d 428.

§ 18. Combinations in restraint of trade prohibited. — That no incorporated company or any association of persons or stock company, in the state of Idaho, shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders or the trustees or assignees of such stockholders, or in any manner whatsoever, for the purpose of fixing the price or regulating the production of any article of commerce or of produce of the soil, or of consumption by the

people; and that the legislature be required to pass laws for the enforcement thereof, by adequate penalties, to the extent, if necessary for that purpose, of the forfeiture of their property and franchise.

Cross ref. Antitrust law, §§ 48-101 — 48-117.

ANALYSIS

Exclusive sales agency.

Labor not article of commerce.

Public utilities.

Exclusive Sales Agency.

Contract creating an exclusive agency to sell gas and oil and binding the agent not to sell the goods of any other company does not violate the state anti-trust law enacted to carry out the provisions of this section. Independent Gas & Oil Co. v. T.B. Smith Co., 51 Idaho 710, 10 P.2d 317 (1932).

Labor Not Article of Commerce.

Labor is not commodity or article of commerce within meaning of constitutional and statutory provisions. Robinson v. Hotel & Restaurant Employees Local No. 782, 35 Idaho 418, 207 P. 132, 27 A.L.R. 642 (1922).

Public Utilities.

Public utilities act is justified by this provision of the Constitution, for it is largely concerned with preventing unreasonable rates and combinations by public utilities. Idaho Power & Light Co. v. Blomquist, 26 Idaho 222, 141 P. 1083, 1914E Ann. Cas. 282 (1914).

All property is held subject to power of the state to regulate or control its use, and corporation on being vested with powers and franchises to serve public becomes in law subject to governmental regulation. Idaho Power & Light Co. v. Blomquist, 26 Idaho 222, 141 P. 1083, 1916E Ann. Cas. 282 (1914).

Monopoly created by combination, by dividing territory to be supplied, or by driving out weaker corporation by stronger, and thereafter taxing business all it will stand, is the kind of monopoly and combination that framers of the Constitution had in mind; not a public utility corporation governed and controlled by law, as legislature has sought to govern and regulate such corporations by provisions of the public utilities act. Idaho Power & Light Co. v. Blomquist, 26 Idaho 222, 141 P. 1083, 1916E Ann. Cas. 282 (1914).

This section does not either directly or indirectly prohibit legislature from enacting a law whereby rates to be charged by public utility corporations for their services and product may be made or established. Idaho Power & Light Co. v. Blomquist, 26 Idaho 222, 141 P. 1083, 1916E Ann. Cas. 282 (1914).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1111, 1185, 1190, 1462.

Article XII

CORPORATIONS, MUNICIPAL

SECTION.

1. General laws for cities and towns.
2. Local police regulations authorized.

SECTION.

3. State not to assume local indebtedness.
4. Municipal corporations not to loan credit.

§ 1. General laws for cities and towns. — The legislature shall provide by general laws for the incorporation, organization and classification of the cities and towns, in proportion to the population, which laws may be altered, amended, or repealed by the general laws. Cities and towns heretofore incorporated, may become organized under such general laws, whenever a majority of the electors at a general election, shall so determine, under such provisions therefor as may be made by the legislature.

Cross ref. Municipal corporations, Title 50.

Cited in: People ex rel. O'Neil v. Bancroft, 3 Idaho 356, 29 P. 112 (1892); Green v. State Bd. of Canvassers, 5 Idaho 130, 47 P. 259, 95 Am. St. R. 169 (1896); Brown v. Village of Grangeville, 8 Idaho 784, 71 P. 151 (1903); Boise City Nat'l Bank v. Boise City, 15 Idaho

792, 100 P. 93 (1909); Mix v. Board of Comm'rs, 18 Idaho 695, 112 P. 215, 32 L.R.A. (n.s.) 534 (1910); Fenton v. Board of Comm'rs, 20 Idaho 392, 119 P. 41 (1911); Hodges v. Tucker, 25 Idaho 563, 138 P. 1139 (1914); Village of Lapwai v. Alligier, 69 Idaho 397, 207 P.2d 1025 (1949); State v. Whelan, 103 Idaho 651, 651 P.2d 916 (1982).

ANALYSIS

Amendments of special charters.
 Boise city charter.
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 Special charters not abolished.
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Amendments of Special Charters.

Legislature is not required to submit acts amending special charters of cities to electors of such cities prior to their going into effect. *Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

Special charters issued to cities by the territorial legislature prior to adoption of the Constitution of this state can be amended only by special acts of legislature. *Kessler v. Fritchman*, 21 Idaho 30, 119 P. 692 (1911).

The Constitution did not attempt to change or abrogate method of organizing municipal corporation in the first instance as provided by R.S., § 2224, but did propose that before a city or town already incorporated should be taken out from under its special charter or the law under which it was then operating, question should be submitted to all electors of the municipality without qualification or limitation and thus be determined by the general electorate of the city or town. *Kessler v. Fritchman*, 21 Idaho 30, 119 P. 692 (1911).

Special charters of cities can be amended only by special acts. General laws relating to municipal affairs of local concern to the government of cities do not amend or alter special charters under which cities have been organized prior to the adoption of the constitution. *Hoffer v. City of Lewiston*, 59 Idaho 538, 85 P.2d 238 (1938).

Where a special municipal charter prescribes the qualification of jurors in action to which it is a party, such charter provision will prevail over general law respecting the qualification of trial jurors, but where the court follows the general law instead of the charter provision, this will not be held as prejudicial error, since the municipality has no vested right to have a particular juror try its case. *Hoffer v. City of Lewiston*, 59 Idaho 538, 85 P.2d 238 (1938).

The state legislature is empowered to amend a special municipal charter without a vote of the people within the municipality, but such charter can be amended only by special legislative enactment. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Boise City Charter.

Under this and art. 3, § 16, art. 11, § 2, and art. 21, § 2, the Boise City charter, which

was received from the territorial legislature, is subject to amendment only by a special act of the state legislature specifically referring to the charter, both in the title and in the body of the act. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Where Boise City's charter provided that city taxes should be levied by the mayor and council, assessed by the city assessor, and collected by the city tax collector, the state legislature is not inhibited from transferring these duties to the county officers of Ada county, but such county officers, in the discharge of such duties, merely act as agents for the city. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Provision of Boise City's special charter as to county collecting city taxes and compensation therefor controls over general statutes on the same subjects. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Commission Form of Government.

The act of March 13, 1911, S.L. 1911, ch. 82, p. 280, known as the Commission Government Act, was not in conflict with this section of the Constitution, and it was within the power and authority of legislature to enact the same. *Kessler v. Fritchman*, 21 Idaho 30, 119 P. 692 (1911); *Swain v. Fritchman*, 21 Idaho 783, 125 P. 319 (1912).

Pursuant to this section, legislature in 1911 enacted "the Black Law" (§ 50-3601 et seq. (repealed)) providing commission form of government for certain cities. *Meier v. City Council*, 43 Idaho 693, 254 P. 221 (1927).

Provisions of chapter providing for commission form of government for certain cities and their return to original charter after properly conducted election is not violation of this section. *Meier v. City Council*, 43 Idaho 693, 254 P. 221 (1927).

Construction.

This provision has no application to the motor fuel tax law and there is no legislative intent in the law to exempt municipalities from payment of the gasoline tax simply because the gasoline is bought out of the state. *State ex rel. Pfost v. Boise City*, 57 Idaho 507, 66 P.2d 1016 (1937).

"A majority of the electors at a general election" as used in this section means a majority of those voting on the proposition for a city to come under the general laws for the incorporation of cities and not a majority of all those voting at the general election. *Anderson v. Boise City*, 91 Idaho 527, 427 P.2d 574 (1967).

Detaching Agricultural Lands.

This section is not violated by statute providing that upon ascertainment of the existence of the facts therein mentioned district court shall render judgment detaching agri-

cultural lands from a municipality. *Lyon v. Payette*, 38 Idaho 705, 224 P. 793 (1924).

General Incorporation Laws.

Power is directly given to legislature to enact general laws for the incorporation of cities, towns, and villages, and to alter, amend, or repeal such laws at any time. *State ex rel. Hays v. Steunenberg*, 5 Idaho 1, 45 P. 462 (1896).

Municipal Officers.

Provisions of this section include power to designate officers of municipal governments, manner of their election and duties to be fulfilled by each officer. *Vineyard v. City Council*, 15 Idaho 436, 98 P. 422 (1908).

Reorganization of Cities.

Latter part of this section of the Constitution points out a means by which towns or villages, which had been incorporated prior to the adoption of the Constitution, may become organized into cities under general laws; that is, whenever a majority of the electors, at a general election held for that purpose, so indicate by their votes. *State ex rel. Hays v. Steunenberg*, 5 Idaho 1, 45 P. 462 (1896).

This section reserves right to the people of a city organized under special charter, issued prior to adoption of the Constitution, to change form of government by vote of a majority of electors at an election held for such purpose. *Kessler v. Fritchman*, 21 Idaho 30, 119 P. 692 (1912).

The words "general election" as used in this section mean that the general election should be a general election for purpose of changing form of government, at which the people having the general qualifications of electors to vote should have a free and open opportunity of expressing themselves upon questions submitted, and that such qualification should not be limited to any special qualification, and does not mean that such election shall be at

the time of a general election under either the general election laws of the state or the municipality holding such election. *Kessler v. Fritchman*, 21 Idaho 30, 119 P. 692 (1912).

Special Charters Not Abolished.

This section does not abolish special municipal charters when they were operating thereunder at the time of the effective date of the Constitution. Municipalities may abandon their special charters by a vote of the people, as provided in this section. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Special Improvements.

It is within the power of legislature to provide for the incorporation and organization of cities and villages, and to authorize such cities and villages to make public improvements such as paving, grading, and guttering streets, building of sidewalks and construction of curbing, and to provide that cost of such improvements be paid from the general levy of taxes, or by means of special assessments made against the property specially benefited, and that municipal bonds be issued for purpose of raising such revenue with which to pay for such improvements, and that all such regulations and matters be entirely within the power of legislature to be provided for by proper legislation. *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912).

Special Legislation Not Prohibited.

This section prohibits enactment of local or special laws on the subjects therein enumerated, but leaves legislature master of its own discretion in passing special laws on subjects not prohibited by the Constitution. *Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention proceedings, Vol. I, pp. 180, 632, 636, 637; Vol. II, pp. 1435, 1436, 1491.

§ 2. Local police regulations authorized. — Any county or incorporated city or town may make and enforce, within its limits, all such local police, sanitary and other regulations as are not in conflict with its charter or with the general laws.

Comp. provisions: Cal. Art. 11, § 7.

Cited in: *In re Francis*, 7 Idaho 98, 60 P. 561 (1900); *In re Snyder*, 10 Idaho 682, 79 P. 819, 68 L.R.A. 708 (1905); *Gale v. City of Moscow*, 15 Idaho 332, 97 P. 828 (1908); *Mix v. Board of Comm'rs*, 18 Idaho 695, 112 P. 215, 32 L.R.A. (n.s.) 534 (1910); *Byrns v. City of Moscow*, 21 Idaho 398, 121 P. 1034 (1912); *Baillie v. City of Wallace*, 24 Idaho 706, 135 P. 850 (1913); *State v. Frederic*, 28 Idaho 709, 155 P. 977 (1916); *Foster's Inc. v. Boise City*, 63 Idaho 201, 118 P.2d 721 (1941); *State v.*

Poynter, 70 Idaho 438, 220 P.2d 386 (1950); *County of Ada v. Hill*, 110 Idaho 289, 715 P.2d 959 (1986); *Miller v. Miller*, 113 Idaho 415, 745 P.2d 294 (1987); *Heck v. Commissioners of Canyon County*, 123 Idaho 826, 853 P.2d 571 (1993); *Arthur v. Shoshone County*, 133 Idaho 854, 993 P.2d 617 (Ct. App. 2000).

ANALYSIS

Ad valorem tax exemption.
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Ad Valorem Tax Exemption.

This section was not violated by ch. 116, 1967 Session Laws, as amended by ch. 377, 1967 Session Laws (§§ 63-105R, 63-105Y, 63-105Z, 63-3638); exempting agricultural crops from ad valorem taxation; defining business inventory; exempting same from ad valorem taxation by increasing exemptions in steps over a four-year period from partial to whole exemptions; providing for transfer of funds from the sales tax fund to all counties in the state for distribution to all taxing districts in the counties, to be applied in the same manner and in the same proportions as revenues from ad valorem taxation; and providing formulas for determining percentages of sales tax fund to go to all counties and taxing districts in counties. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

Beer Sales.

County regulation providing that no beer shall be sold from Saturday midnight to 7:00 a.m. of following Monday, and on certain designated holidays, which regulation extended hours when beer should not be sold as provided by statute, is not in conflict with the general law, and is a valid regulation in territory embraced in county, exclusive of municipalities, but regulation is of no effect within limits of incorporated municipalities located in the county. *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949).

Restrictions imposed by the county on the sale of beer which merely added limitations to statutory provisions, and which are not unreasonable or discriminatory, and reasonably tend to promote some object within the police power of county, and not so restrictive as to operate prohibitively, will be upheld as being within the police power and not in conflict with the general law. *Taggart v. Latah*

County, 78 Idaho 99, 298 P.2d 979 (1956).

County ordinance, which prohibited licensed beer establishments located in unincorporated territory in the county from selling beer between the hours of midnight and 7:00 a.m. on weekdays was valid, though § 23-1012 prohibited sales on weekdays between 1:00 a.m. and 7:00 a.m., since the ordinance was reasonable and did not arbitrarily interfere with the operation of the establishments involved so as to be prohibitive. *Taggart v. Latah County*, 78 Idaho 99, 298 P.2d 979 (1956).

Concealed Weapons.

The right to prohibit carrying of concealed weapons falls within the police power of a municipality and an ordinance enforcing same is constitutional. *State v. Hart*, 66 Idaho 217, 157 P.2d 72 (1945).

Construction.

The authority to make police regulations granted by this section includes not only the substance but the procedure for adoption of such regulations and since by the terms of this section they may not be in conflict with the general laws they cannot be in conflict with a general law setting out the procedural requirements for such action. *Citizens for Better Gov't v. County of Valley*, 95 Idaho 320, 508 P.2d 550 (1973).

Where the local ordinances' provisions imposing a sales tax on the sale of ski tickets specifically refer to receipts received by the vendor of the ski lift tickets and do not focus on a specific activity to trigger the taxable event, it is the sales transaction from which the receipt is received and not the activity of using the ski lifts that is the event subject to taxation under § 63-3612(f) and the corresponding local ordinances, and since the taxable event takes place within the jurisdiction and geographical boundaries of the localities, the sales tax ordinances do not violate this constitutional section. *City of Sun Valley v. Sinclair Oil Corp.*, 128 Idaho 219, 912 P.2d 106 (1996).

County Regulations.

Under constitutional provision allowing any county, incorporated city, or town to make and enforce within its limits local police regulations, a county regulation passed under such constitutional grant of power, cannot be enforced in a municipality in a field reserved to municipalities under the constitution, regardless of whether there is any conflicting municipal ordinance, as question is one of power, and not one of conflict. *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949).

To give effect to a county building permit within city limits would violate the separate sovereignty provisions and the careful avoid-

ance of any county/city jurisdictional conflict or overlap which is safeguarded therein. *Boise City v. Blaser*, 98 Idaho 789, 572 P.2d 892 (1977).

The fact that a challenged county regulation does not, in terms, exclude municipalities, does not make it invalid in the territory to which it is applicable; accordingly, while a county ordinance banning the sale of beer in kegs was without force and effect within the limits of the incorporated municipalities located in that county, the failure to expressly exclude municipalities did not invalidate the ordinance. *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983).

A county cannot make police regulations effective within a municipality and it is irrelevant that the ordinance is not in conflict with any existing ordinance of a municipality because the question is one of power and not one of conflict. *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983).

County code provisions authorizing appeal of county personnel decisions to the local court of general jurisdiction were not police or sanitary regulations of the type a county was empowered to enact. *Gibson v. Ada County Sheriff's Dept.*, — Idaho —, 72 P.3d 845 (2003).

Criminal Offenses.

Cities have the power to prescribe and enforce police regulations punishing misdemeanors, notwithstanding general statute prescribing punishment for the same offense. *State v. Quong*, 8 Idaho 191, 67 P. 491 (1902).

Under this section, counties, cities and towns have full power in affairs of local government notwithstanding general laws of the state defining and punishing the same offense. *State v. Musser*, 67 Idaho 214, 176 P.2d 199 (1946); *State v. Brunello*, 67 Idaho 242, 176 P.2d 212 (1946).

Where a city ordinance, which made it a misdemeanor for a person to be intoxicated while in a private motor vehicle located in a public place, was directed toward the control of public intoxication, the ordinance was a valid exercise of the authority delegated to the city by § 50-302 to maintain the peace, good government, and welfare of the city. *Voyles v. City of Nampa*, 97 Idaho 597, 548 P.2d 1217 (1976).

Where a city ordinance, which made it a misdemeanor for a person to be intoxicated while in a private motor vehicle located in a public place, did not attempt to control traffic or to control roadways, the ordinance was not in conflict with §§ 50-313 or 50-314, which provide cities with authority to control traffic and roadways within their corporate limits, nor with the uniform act regulating traffic on highways. *Voyles v. City of Nampa*, 97 Idaho 597, 548 P.2d 1217 (1976).

Firefighters.

The contract the City of Boise made with the Idaho National Guard (IDANG) to provide Air Rescue Fire Fighting (ARFF) services at the Boise municipal airport did not violate the Idaho Constitution or the Idaho Civil Service Act; however, the firefighters were entitled to collectively bargain in anticipation of the City's actions to replace union employees with IDANG firefighters to perform the work previously performed by union members, and by refusing to negotiate with the union, the City violated the Collective Bargaining Act. *International Ass'n of Firefighters Local No. 672 v. Boise City*, 136 Idaho 162, 30 P.3d 940 (2001).

Intoxicating Liquors.

This section is copied from the California Constitution and the California decisions aid in its construction. County ordinances are not general laws within its purview and a city may license the sale of beer within its limits in conformity with general law regardless of county regulations. *State v. Robbins*, 59 Idaho 279, 81 P.2d 1078 (1938).

Regulation or prohibition of the traffic in intoxicants by municipalities is a police regulation, within meaning of the constitution, but, of course, applies only to local jurisdiction. *State v. Musser*, 67 Idaho 214, 176 P.2d 199 (1946); *State v. Brunello*, 67 Idaho 242, 176 P.2d 212 (1946).

A county may not prohibit sale of liquor by license, if state law provides for sale of liquor by license, but the county may prescribe certain restrictions on sale of liquor, if those restrictions do not conflict with state act regulating sale of liquor by license. *Gartland v. Talbott*, 72 Idaho 125, 237 P.2d 1067 (1951).

Restriction on sale of liquor by license is a proper exercise of police power by county, since no one has an inherent constitutional right to license for sale of liquor. *Gartland v. Talbott*, 72 Idaho 125, 237 P.2d 1067 (1951).

Restriction of licenses for sale of beer in residential district of town by county commissioners to two (2) did not constitute a prohibition of sale of beer, but constituted a reasonable restriction, which did not conflict with statutory law on sale of beer. *Gartland v. Talbott*, 72 Idaho 125, 237 P.2d 1067 (1951).

Legislative Powers.

Legislative powers of municipal corporation may be expressly laid down in charter or legislative act, or they may be necessarily inferred from powers granted. *Continental Oil Co. v. City of Twin Falls*, 49 Idaho 89, 286 P. 353 (1930).

Constitutional provision granting power to any county, incorporated city, or town, to make and enforce police measures, within its limits, not in conflict with the general law, grants authority to a municipality to make police regulations not in conflict with general

law, co-equal with the authority of the legislature to pass general police laws, but legislature cannot restrict constitutional right of the municipality to make police regulations not in conflict with the general law. *Clyde Hess Distrib. Co. v. Bonneville County*, 69 Idaho 505, 210 P.2d 798 (1949).

Livestock Ordinance.

In the absence of a state legislative enactment clearly indicating that livestock must be free to roam the lands of Idaho uninhibited by the ownership or character of the lands, counties and municipalities may validly exercise their police powers to prohibit such free roaming livestock. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

County ordinance prohibiting livestock from running at large was not invalid as extending application of the ordinance beyond the geographical limits of the county since the ordinance did not purport to, nor could it affect or regulate matters occurring outside such county; should livestock from outside the county wander into lands within the county, they would then come under the jurisdiction of the county and be subject to its valid ordinances and the fact that their owners might reside outside the county would not alter the result. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

County ordinance prohibiting livestock from running loose was without force and effect within the limits of the incorporated municipalities located in the county; however, this did not invalidate the ordinance nor make it ineffective in the balance of the county. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

Even if it be assumed for the purpose of discussion that the herd district statutes in some degree addressed the same problems as those addressed by a county ordinance prohibiting livestock from roaming, local enactments which merely extend the state law by way of additional restrictions or limitations are not invalid. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

Fact that compliance with the ordinance prohibiting livestock from roaming would be burdensome in that livestock owners would be required to spend large sums of money in fencing their lands did not render the ordinance unreasonable and arbitrary. *Benewah County Cattlemen's Ass'n v. Board of County Comm'rs*, 105 Idaho 209, 668 P.2d 85 (1983).

Municipal Ordinances.

This provision authorizes the council of any city to make and enforce all ordinances that are not in conflict with the general law, and

forbids the making and enforcing of any ordinance in conflict with the general law. In re *Ridenbaugh*, 5 Idaho 371, 49 P. 12 (1897).

The provisions of a city ordinance must yield to the provisions of a state statute under this section, §§ 49-581 (amended and redesignated as § 49-206) and 50-302; accordingly, where defendant, upon approach of police car which displayed flashing lights but did not sound siren, turned left in front of police car causing collision rather than pulling to right hand side or road or stopping, conviction under § 49-645, which requires that drivers yield for either an audible or a visual signal, was upheld even though the Boise City Code requires both an audible and visible signal. *State v. Barsness*, 102 Idaho 210, 628 P.2d 1044, appeal dismissed, 454 U.S. 958, 102 S. Ct. 495, 70 L. Ed. 2d 373 (1981).

Ordinances.

There are three general restrictions that apply to ordinances enacted under the authority conferred by this constitutional provision: (1) the ordinance or regulation must be confined to the limits of the governmental body enacting the same, (2) it must not be in conflict with other general laws of the state, and (3) it must not be an unreasonable or arbitrary enactment. *Hobbs v. Abrams*, 104 Idaho 205, 657 P.2d 1073 (1983).

Parking Meters.

The installation of parking meters is a valid exercise of the police power of the city in regulating the use of public streets and the flow of traffic thereon, and the revenue therefrom is not so disproportionate to expense as to make such regulations a revenue measure. *Foster's, Inc. v. Boise City*, 63 Idaho 201, 118 P.2d 721 (1941).

Preliminary Plats.

Even if preliminary plat in instant case was approved prior to annexation, such conditional preliminary approval was not a final decision and did not amount to extraterritorial jurisdiction beyond the city limits. *Castaneda v. Brighton Corp.*, 130 Idaho 923, 950 P.2d 1262 (1988).

Regulatory Tax.

One of the distinctions between lawful tax for regulatory purposes and one solely for revenue is that in former case, license fee demanded must bear some reasonable relation to cost of such regulation, but when imposed under general taxing power, tax rests within discretion of taxing authority. *State v. Nelson*, 36 Idaho 713, 213 P. 358 (1923); *Foster's, Inc. v. Boise City*, 63 Idaho 201, 118 P.2d 721 (1941).

A license that is imposed for revenue is not a police regulation, but a tax, and can be upheld only under the power of taxation. A

city or village can not, in the exercise of its police power, levy taxes. *Foster's, Inc. v. Boise City*, 63 Idaho 201, 118 P.2d 721 (1941).

City's impact fee imposed as a precondition to the issuance of a building permit was not a regulation which would be authorized under the police power granted by this section, but rather was a tax. *Idaho Bldg. Contractors Ass'n v. City of Coeur d'Alene*, 126 Idaho 740, 890 P.2d 326 (1995).

Restoration and Maintenance Fee.

Revenue to be collected from a city's street restoration and maintenance fee had no necessary relationship to the regulation of travel over its streets, but rather was to generate funds for the nonregulatory function of repairing and maintaining streets. *Brewster v. City of Pocatello*, 115 Idaho 502, 768 P.2d 765 (1988).

Sewer Connection Fee.

A city ordinance charging a connection fee to residents of a sewer district for hookups to the city sewer system was in excess of the city's municipal jurisdiction and was in conflict with the statutory scheme governing sewer districts. *City of Boise v. Bench Sewer Dist.*, 116 Idaho 25, 773 P.2d 642 (1989).

State-Owned Buildings.

The area of state-owned buildings is completely covered by the general law and may not be subjected to an ordinance which is purely local in nature. *Caesar v. State*, 101 Idaho 158, 610 P.2d 517 (1980).

Solid Waste Franchise.

In regulating the collection of solid waste within its city limits, a municipality is exercising its police power function under Idaho Const. art. XII, § 2, and under Idaho Code § 48-107(c), it is afforded a statutory exemption from the Idaho Competition Act, and since Idaho Code § 50-344 does not conflict with granting exclusive solid waste collection franchises, this exercise is valid. *Plummer v. City of Fruitland*, — Idaho —, 87 P.3d 297 (2004).

Subdivisions.

A county has the authority to enact a subdivision ordinance under the provisions of this article subject to the following restrictions: (1) the ordinance or regulation must be confined to the limits of the governmental body enacting the same, (2) it must not be in conflict with other general laws of the state, and (3) it must not be an unreasonable or arbitrary enactment. *State v. Clark*, 88 Idaho 365, 399 P.2d 955 (1965).

Traffic Regulations.

Neither the Idaho statutes nor the Uniform Manual of Traffic Control Devices required a traffic engineering study by a city prior to

installation of a stop sign. *Lisher v. City of Potlatch*, 101 Idaho 343, 612 P.2d 1190 (1980).

Utility Rates.

In the absence of any statutory or constitutional provision expressly or implicitly requiring that a municipality act by ordinance in the establishment and amendment of rates charged for extending the city's water system, it was proper for a city to adopt the rate increase by resolution. *Snake River Homebuilders Ass'n v. City of Caldwell*, 101 Idaho 47, 607 P.2d 1321 (1980).

Vagrancy.

Under this section, a city has authority to enact ordinances for the prevention of vagrancy and the fact that such ordinance is somewhat broader in scope than the legislative act on the same subject does not render such ordinance invalid. *Clark v. Alloway*, 67 Idaho 32, 170 P.2d 425 (1946).

Zoning Ordinances.

This section does not authorize a municipality to enact a zoning ordinance in violation of the mandatory notice and hearing requirements of I.C., § 50-1204 (repealed). *Citizens for Better Gov't v. County of Valley*, 95 Idaho 320, 508 P.2d 550 (1973).

A county has the authority to zone a district primarily for agricultural and farm related purposes and to prohibit the placement of mobile homes in the zone. *County of Ada v. Walter*, 96 Idaho 630, 533 P.2d 1199 (1975).

Governmental power to interfere by zoning regulations with general rights of the landowner by restricting the character of his use is not unlimited and such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals or general welfare. *Dawson Enters., Inc. v. Blaine County*, 98 Idaho 506, 567 P.2d 1257 (1977).

Since the power of local legislative bodies to enact zoning ordinances derives from the police power, the ordinance must bear a reasonable relation to goals the state may properly pursue under its police power. *Dawson Enters., Inc. v. Blaine County*, 98 Idaho 506, 567 P.2d 1257 (1977).

Where a section of land was zoned residential in order to control population density, prevent traffic congestion and avoid spreading county services too thin, the ordinance bore a rational relation to the health, safety, morals and welfare of the community and the denial of a variance to a commercial developer was reasonable. *Dawson Enters., Inc. v. Blaine County*, 98 Idaho 506, 567 P.2d 1257 (1977).

The legislature clearly intended that the authority to enact comprehensive plans, establish zoning districts and adopt amending ordinances be exercised exclusively by

city and county legislative or governing bodies and pursuant to specific prescribed procedures; thus, the comprehensiveness of zoning legislation in Idaho leaves no room for direct legislation by electors through an initiative election, and an initiative through which city sought to enact ordinance establishing height criteria for certain areas was in conflict with the Local Planning Act of 1975 and was invalid. *Gumprecht v. City of Coeur D'Alene*, 104 Idaho 615, 661 P.2d 1214 (1983).

The power of counties and municipalities to zone is a police power authorized by this section. *Gumprecht v. City of Coeur D'Alene*, 104 Idaho 615, 661 P.2d 1214 (1983).

Local legislative bodies are authorized to enact zoning ordinances restricting use of property within the corporate limits. However, the zoning power is not unlimited; the power to zone derives from the police power of the State, and zoning ordinances must therefore bear a reasonable relation to goals properly pursued by the State through its police power. *City of Lewiston v. Knieriem*, 107 Idaho 80, 685 P.2d 821 (1984).

The burden of proving that a local zoning ordinance is invalid rests upon the party challenging its validity and the presumption in favor of validity can be overcome only by a clear showing that the ordinance as applied is confiscatory, arbitrary, unreasonable and capricious. Where there is a basis for a reasonable difference of opinion, or if the validity of legislative classification for zoning purposes is debatable, a court may not substitute its judgment for that of the local zoning authority. *City of Lewiston v. Knieriem*, 107 Idaho 80, 685 P.2d 821 (1984).

A local zoning ordinance which allowed mobile homes to be developed only in certain areas, but those areas amounted to approximately 50 percent of the city, bore a reasonable relation to the protection of property values, the general health and welfare and the intent of comprehensive zoning, that it was not shown to be clearly arbitrary or unreasonable and hence represented a valid exercise of the city's police power. *City of Lewiston v. Knieriem*, 107 Idaho 80, 685 P.2d 821 (1984).

Opinions of Attorney General. This section prohibits the sheriff or any other county official from interfering with a municipality. Therefore, the county commissioners and sheriff may not constitutionally take over the duties of the municipality in the event of a disaster emergency. OAG 89-9.

Plans voluntarily entered into among the

various political subdivisions are valid under the Idaho Disaster Preparedness Act of 1975. Because the cities voluntarily ratify the disaster emergency plans, this section is not violated. OAG 89-9.

The responsibilities and authorities of the county commissioners to the citizens of an incorporated municipality in times of a disaster emergency are defined in the intergovernmental disaster emergency plan, if any, agreed to by the city. This section prohibits the county from unilaterally imposing its plan on an incorporated city. OAG 89-9.

The provisions of §§ 54-1001B and 54-2620 do not empower a city to require the state or its contractors to obtain electrical and plumbing permits; therefore, a city does not have the authority to require the state to obtain building permits when building or remodeling state buildings within the city. OAG 90-6.

Cities in Idaho almost certainly have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal law allows cities to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5.

Counties in Idaho probably have authority under current state law to franchise cable television companies. With general franchising authority under state law, federal law allows counties to regulate the basic cable television service rate and charge a franchise fee, both subject to the conditions of federal law. OAG 94-5.

In reading subsection (a) of § 67-6526 in conjunction with all of Chapter 65, and in particular §§ 67-6504, 67-6505, and the remainder of § 67-6526, it is clear that the ordinance governing the area of impact must be adopted by both the city council and the board of county commissioners. Section 67-6526(a)(1) merely states that a plan drafted by a city may be applied to the area of impact. The application of the city's plan to the area of impact only occurs when ordinances adopting such plan are enacted by the city council and the board of county commissioners. Reading § 67-6526(a)(1) as giving cities the power to act unilaterally in adopting ordinances governing unincorporated areas of impact would render it unconstitutional as violating this section. OAG 95-1.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 632; Vol. II, p. 1435.

§ 3. State not to assume local indebtedness. — The state shall never assume the debts of any county, town, or other municipal corporation, unless such debts shall have been created to repel invasion, suppress insurrection or defend the state in war.

Quasi-Municipal Corporation.

"Other municipal corporations," as used in the Constitution, must necessarily have reference to such municipal corporations as may be created by law in addition to counties, towns, or cities. An irrigation district is a political subdivision of the state, similar in kind and character to a county or city in

general form of government, and is a quasi-municipal corporation. *Pioneer Irrigation Dist. v. Walker*, 20 Idaho 605, 119 P. 304 (1911).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 633; Vol. II, p. 1436.

§ 4. Municipal corporations not to loan credit. — No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association: provided, that cities and towns may contract indebtedness for school, water, sanitary and illuminating purposes: provided, that any city or town contracting such indebtedness shall own its just proportion of the property thus created and receive from any income arising therefrom, its proportion to the whole amount so invested.

Cited in: *State v. Union Cent. Life Ins. Co.*, 8 Idaho 240, 67 P. 647 (1920); *State ex rel. Rich v. Idaho Power Co.*, 81 Idaho 487, 346 P.2d 596 (1959); *Asson v. City of Burley*, 105 Idaho 432, 670 P.2d 839 (1983); *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 794 P.2d 632 (1990).

ANALYSIS

Aid to corporation.
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Aid to Corporation.

Law 1959, ch. 265 which authorizes municipality to issue bonds for acquisition of manufacturing, industrial or commercial enterprises violates the constitutional prohibition against any municipality lending its credit in aid of a corporation. *Village of Moyie Springs v. Aurora Mfg. Co.*, 82 Idaho 337, 353 P.2d 767 (1960).

Bank Deposits.

Deposit of county funds on general deposit with a bank does not create the relation of creditor and debtor and does not constitute a lending of credit in violation of this section,

upholding public depository law. *Bannock County v. Citizens' Bank & Trust Co.*, 53 Idaho 159, 22 P.2d 674 (1933).

This provision prohibits transactions creating the traditional relationship of borrower and lender. *Bannock County v. Citizens' Bank & Trust Co.*, 53 Idaho 159, 22 P.2d 674 (1933).

Holding in *White v. Pioneer Bank & Trust Co.* that county funds illegally deposited are entitled to preference against defunct bank is overruled. School district holding cashier's check is not entitled to preference as a trust beneficiary. *Independent Sch. Dist. No. 1 v. Diedendorf*, 57 Idaho 191, 64 P.2d 393 (1937).

Statute giving no preference against defunct bank for deposits of public funds does not violate this section. County funds placed on general deposit in violation of law does not create a trust entitled to preference; deposit is not a loan of credit. *Aetna Cas. & Sur. Co. v. Wedgwood*, 57 Idaho 682, 69 P.2d 128 (1937).

Construction.

The police retirement fund provided by chapter 15 of title 50 of the state code remains within the effective control of the municipality, but, to the extent that the commissioners provided therein have any autonomy, in disbursing the fund to the beneficiaries, as provided in § 50-1504, they are not discharging a liability of the city to a private association in violation of this section, but are disbursing public funds from a public trust for a public purpose, i. e., compensation of faithful public servants for service rendered over the years. *Hanson v. City of Idaho Falls*, 92 Idaho 512, 446 P.2d 634 (1968).

County Hospital.

This section is cited to sustain holding that county maintaining a hospital and accepting

pay from patients able to pay acts in its governmental capacity and is not liable to pay patients for injuries due to negligence of hospital attendants. *Henderson v. Twin Falls County*, 56 Idaho 124, 50 P.2d 597 (1935).

Fair Associations.

Donation by board of county commissioners to a live stock or fair association, a private corporation, is invalid. R. C. § 3040, attempting to legalize donations by county to private agricultural fair associations, contravenes this section and is unconstitutional. *Fluharty v. Board of County Comm'rs*, 29 Idaho 203, 158 P. 320 (1916).

However, the levying of a special tax for purpose of exhibiting products and industries of county, as provided by § 31-823, is constitutional. *Bevis v. Wright*, 31 Idaho 676, 175 P. 815 (1918).

This section prohibits a donation by a county to a private association conducting a fair. This would place county funds under control of the corporation to be used for purposes other than governmental. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

Horse Racing Facilities.

Where plaintiffs did not object to the use of public funds to provide racing facilities for horses, but only objected because they, as quarterhorse owners, did not receive a greater portion of the moneys, but where the quarterhorse owners were also private individuals and if the current practice of distributing funds in the form of purses and statutory percentages was void as to thoroughbred breeders and owners, it would likewise be unconstitutional as to quarterhorse owners and breeders, the remedy sought by the quarterhorse owners would not rectify the alleged unconstitutional usage of public funds and the allegation was without merit. *Idaho Quarterhorse Breeders Ass'n v. Ada County Fair Bd.*, 101 Idaho 339, 612 P.2d 1186 (1980).

In General.

The proprietary powers of municipal corporations of this state are limited to functions and purposes which are municipal and public in character as distinguished from those which are private in character and engaged in for profit; incidental or indirect benefit to the public cannot transform a private industrial enterprise into a public one or imbue it with a public purpose. *Village of Moyie Springs v. Aurora Mfg. Co.*, 82 Idaho 337, 353 P.2d 767 (1960).

The framers of the Idaho Constitution had no intention of limiting the power of municipalities to contract in furtherance of the public interest, but rather of limiting "loans" or "donations" of public credit; these words clearly limit the scope of the credit clause to cases in which the public credit is under the

control of private interests. *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 703 P.2d 714 (1985).

Lease of County Property.

In an action challenging the validity of lease of county fairground property evidence that county's only expenditures were proper expenditures for insurance premiums, extension of waterline, and access road work was binding on court. *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

The expenditures for fire insurance premiums by the county on a fairground building leased to a private horse racing corporation, and expenditures for extension of a waterline to the building and access road work, were not in violation of the prohibition of expenditure of county funds for private benefit, in view of the primary public benefit from such expenditures. *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

Loan of Credit.

Placing county property in hands of trustee to be liquidated for the benefit of the county and other creditors was a loan of credit in violation of this section. *Johnson v. Young*, 53 Idaho 271, 23 P.2d 723 (1933).

To constitute a violation of the provisions of this section it is essential that there be an imposition of liability directly or indirectly on the political body. Leasing a ball park to a local ball team for a percentage of the gate receipts was not a violation of this section. *Hansen v. Independent Sch. Dist.*, 61 Idaho 109, 98 P.2d 959 (1939).

The creation of the cooperative, its contracts for the purchase of gas and for the sale of its bonds to raise funds for the construction, operation and maintenance of a gas distribution system, and the ordinance of the city of Idaho Falls granting an exclusive franchise for thirty years to the cooperative with the contract provided for by such ordinance are all parts of a plan and design devised to enable the city of Idaho Falls to evade and circumvent the limitations and prohibitions of the constitution and statutes, and to exercise powers not granted to a municipality. *O'Bryant v. City of Idaho Falls*, 78 Idaho 313, 303 P.2d 672 (1956).

Since in a case where a replacement dam was to be built under §§ 43-2201 — 43-2207 and the Federal Reclamation Act and a bond issue had been approved to finance it, the relevant portions of § 43-2201, the various contracts and the trust indenture clearly provided that the bond payments could be made only from a special fund and the only obligation that the participating irrigation districts had with respect to the special fund and the bond payments as provided by § 43-2201 and their respective spaceholder contracts was to

pay their respective portions of the principal and interest on the bonds and were not obligated to pay the share of bond payments which had been apportioned to other participating irrigation districts. The proposed bond issue did not constitute an unlawful loaning of the credit of the irrigation districts in violation of either this section or Idaho Const., art. VIII, § 4. *Kerner v. Johnson*, 99 Idaho 433, 583 P.2d 360 (1978).

Medical Aid to Indigents.

Sections 31-3401 — 31-3410 (now repealed) and §§ 31-3501 — 31-3516, were not unconstitutional under Const., Art. 8, § 4 and this section, because those constitutional provisions were adopted only to prevent private interests from gaining advantage at the expense of the taxpayer and were not intended to prohibit counties from giving aid to indigents; since the fund remains within the effective control of the municipality, it is apparent that the evils sought to be prevented by those constitutional provisions do not exist. *Idaho Falls Consol. Hosps. v. Bingham County Bd. of County Comm'rs*, 102 Idaho 838, 642 P.2d 553 (1982).

Municipal Corporations Defined.

Irrigation districts are municipal corporations within meaning of this section. *Pioneer Irrigation Dist. v. Walker*, 20 Idaho 605, 119 P. 304 (1911).

School districts are municipal corporations within meaning of this section. *School Dist. No. 8 v. Twin Falls County Mut. Fire Ins. Co.*, 30 Idaho 400, 164 P. 1174 (1917).

Mutual Insurance Companies.

School district can not become member of a county mutual fire insurance company. *School Dist. No. 8 v. Twin Falls County Mut. Fire Ins. Co.*, 30 Idaho 400, 164 P. 1174 (1917).

Railroad Districts.

Act of legislature providing for formation of railroad districts and the voting of bonds and purchase or construction of railroads by such districts, and providing for operating or leasing the same, is in violation of this section. *Atkinson v. Board of Comm'rs*, 18 Idaho 282, 108 P. 1046, 28 L.R.A. (n.s.) 412 (1910).

Redevelopment Agencies.

Although action by the city of Boise pursu-

ant to § 50-2015 may constitute the city's raising money for or donating or lending credit to the Boise Redevelopment Agency, the prohibitions of Art. 8, § 4 and Art. 12, § 4 of the Idaho Constitution are not applicable to the agency since it is a public, rather than a private, enterprise. *Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 499 P.2d 575 (1972).

Utility Projects.

In a ground lease and power sales contract relating to the construction of a hydroelectric project, to be financed by the city under §§ 50-1026 and 50-1026A, a contractual obligation to sell a certain percentage of power to the company leasing property to the city for the project for a period in excess of the proposed term of the bonds did not violate either Const., Art. 8 § 4 or this section, prohibiting loans or donations of public credit, since such obligation was of a contractual nature, and a sale for adequate consideration did not amount to a loan or donation; the accrual of incidental benefits to a private enterprise will not invalidate an otherwise constitutional transaction. *Utah Power & Light Co. v. Campbell*, 108 Idaho 950, 703 P.2d 714 (1985).

Opinions of Attorney General. School districts are constitutionally prohibited from creating or aiding any private non-profit corporation and are not statutorily authorized to create public corporations; however, individuals acting in a private capacity may create a non-profit corporation for the purpose of soliciting and managing gifts exclusively in support of a public school system. Gifts to such a non-profit corporation would qualify for income tax credits provided by § 63-3029A. OAG 86-13.

Payment of dues to municipal leagues or associations by cities and counties is an expenditure for a public purpose permitted by the Idaho Constitution and statutes. The use of those dues for lobbying efforts is permissible if the lobbying is for an appropriate public purpose. OAG 89-7.

Collateral References. Discussion of this section is constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 634; Vol. II, p. 1436.

Article XIII

IMMIGRATION AND LABOR

SECTION.

1. Bureau of immigration — Commissioner.
2. Protection and hours of labor.
3. [Repealed.]
4. Child labor in mines prohibited.

SECTION.

5. Aliens not to be employed on public work.
6. Mechanics' liens to be provided.
7. Boards of arbitration.
8. Duties and compensation of commissioner.

§ 1. Bureau of immigration — Commissioner. — There shall be established a bureau of immigration, labor and statistics, which shall be under the charge of a commissioner of immigration, labor and statistics, who shall be appointed by the governor, by and with the consent of the senate. The commissioner shall hold his office for two years, and until his successor shall have been appointed and qualified, unless sooner removed. The commissioner shall collect information upon the subject of labor, its relation to capital, the hours of labor and the earnings of laboring men and women, and the means of promoting their material, social, intellectual and moral prosperity. The commissioner shall annually make a report in writing to the governor of the state of the information collected and collated by him, and containing such recommendations as he may deem calculated to promote the efficiency of the bureau.

Compiler's notes. Section 2 of S.L. 1974, ch. 39 (§ 44-101), pursuant to art. 4, § 20 of the Constitution, created as an executive department of state government, the department of labor and industrial services to replace the department of labor and provided that the new department be headed by a director who shall be the successor in law to the office of the commissioner of immigration, labor and statistics established by this section of the Constitution.

Sec. to sec. ref. This section is referred to in § 44-101.

Payment of Commissioner's Salary.

Where salary has been fixed by legislature

§ 2. Protection and hours of labor. — Not more than eight (8) hours actual work shall constitute a lawful day's work, on all state and municipal works, and the legislature shall pass laws to provide for the health and safety of employees in factories, smelters, mines and ore reduction works.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 2. Not more than eight (8) hours actual work shall constitute a lawful day's work on all state and municipal works."

It was amended, as proposed by S.L. 1901, p. 311, H.J.R. No. 2, and ratified at the general election in November, 1902, to read as it now appears.

Cross ref. Eight hour law, §§ 44-1104 — 44-1106.

for the constitutional office of commissioner of immigration, labor and statistics, a statute directing payment of salaries and authorizing auditor to draw a warrant therefor is sufficient and no further appropriation is necessary. *Reed v. Huston*, 24 Idaho 26, 132 P. 109, 1915A Ann. Cas. 1237 (1913); *Rich v. Huston*, 24 Idaho 34, 132 P. 112 (1913).

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 369; Vol. II, pp. 1372, 1373, 1395, 1606.

Portal to portal act, §§ 44-1201 — 44-1204.

Comp. provisions: *Mont.* Art. 12, § 2.

Utah. Art. 16, § 6.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1377.

48A Am. Jur. 2d, Labor and Labor Relations, §§ 2636, 2637.

51B C.J.S., Labor Relations, § 1192.

§ 3. Restrictions on convict labor. [Repealed]

Compiler's notes. As adopted, this section provided as follows:

"**§ 3. Restrictions on convict labor.** — All labor of convicts confined in the state's prison, shall be done within the prison grounds, except where the work is done on

public works under the direct control of the state."

This section was repealed, as proposed by S.L. 1911, p. 791, H.J.R. No. 24 and ratified at the general election in November, 1912.

§ 4. Child labor in mines prohibited. — The employment of children under the age of fourteen (14) years in underground mines is prohibited.

Cross ref. Child labor law, §§ 44-1301 — 44-1308.

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1380.

§ 5. Aliens not to be employed on public work. — No person, not a citizen of the United States, or who has not declared his intention to become such, shall be employed upon, or in connection with, any state or municipal works.

Cross ref. Employment of aliens on public works prohibited, exception, § 44-1005.

Cited in: McKnight v. Grant, 13 Idaho 629, 92 P. 989, 121 Am. St. R. 287 (1907).

Laws Prohibiting Employment of Alien.

The Idaho Supreme Court held that a law broad enough to prohibit any county government or municipal or private corporation organized under the laws of this state or any other state, territory, or a foreign country and doing business in this state, from giving em-

ployment in any way to any alien who had neglected to become naturalized or declared his intention, offended against the 14th amendment, § 1. Ex parte Case, 20 Idaho 128, 116 P. 1037 (1911); see also, Yick Wo v. Hopkins, 118 U.S. 356, 6 S. Ct. 1064, 30 L. Ed. 220 (1886).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1387, 1394.

§ 6. Mechanics' liens to be provided. — The legislature shall provide by proper legislation for giving to mechanics, laborers, and material men an adequate lien on the subject matter of their labor.

Cross ref. Mechanics' liens are provided for in §§ 45-501 — 45-516.

Cited in: Bannock County v. Citizens' Bank & Trust Co., 53 Idaho 159, 22 P.2d 674 (1933).

Public Buildings.

Public policy of state is to be found in Constitution and statutes, and latter can not declare public policy contrary to Constitution. Boise-Payette Lumber Co. v. Challis Independent Sch. Dist. No. 1, 46 Idaho 403, 268 P. 26 (1928).

This section must be construed in conjunc-

tion with art. 8, §§ 3, 4. Boise-Payette Lumber Co. v. Challis Independent Sch. Dist. No. 1, 46 Idaho 403, 268 P. 26 (1928).

Legislature can not pass statute that will interfere with public policy of state forbidding enforced sale of public buildings in enforcement of mechanics' liens. Boise-Payette Lumber Co. v. Challis Independent Sch. Dist. No. 1, 46 Idaho 403, 268 P. 26 (1928).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1389, 1391.

§ 7. Boards of arbitration. — The legislature may establish boards of arbitration whose duty it shall be to hear and determine all differences and controversies between laborers and their employers which may be submitted to them in writing by all the parties. Such boards of arbitration shall possess all the powers and authority in respect to administering oaths, subpoenaing witnesses, and compelling their attendance, preserving order during the sittings of the board, punishing for contempt, and requiring the production of papers and writings, and all other powers and privileges, in their nature applicable, conferred by law on justices of the peace.

Collateral References. Discussion of this section in constitutional convention. Consti-

tutional Convention Proceedings, Vol. II, pp. 1389, 1391, 1484.

§ 8. **Duties and compensation of commissioner.** — The commissioner of immigration, labor and statistics shall perform such duties and receive such compensation as may be prescribed by law.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1390, 1605.

Article XIV

MILITIA

SECTION.

- 1. Persons subject to military duty.
- 2. Legislature to provide for enrolment of militia.
- 3. Selection and commission of officers.

SECTION.

- 4. Preservation of records, banners, and relics.
- 5. National and state flags only to be carried.
- 6. Importation of armed forces prohibited.

§ 1. **Persons subject to military duty.** — All able-bodied male persons, residents of this state, between the ages of eighteen and forty-five years, shall be enrolled in the militia, and perform such military duty as may be required by law; but no person having conscientious scruples against bearing arms, shall be compelled to perform such duty in time of peace. Every person claiming such exemption from service, shall, in lieu thereof, pay into the school fund of the county of which he may be a resident, an equivalent in money, the amount and manner of payment to be fixed by law.

Cross ref. Laws conforming to this article will be found in §§ 46-101 — 46-114.

Comp. provisions: Mont. Art. 6, § 13. 53 Am. Jur. 2d, Military, and Civil Defense, §§ 30, 33, 35-36, 41.

Utah. Art. 15, § 1. 57 C.J.S., Militia, §§ 1, 2, 4, 5, 7, 8, 10, 12, 21.

§ 2. **Legislature to provide for enrolment of militia.** — The legislature shall provide by law for the enrolment, equipment and discipline of the militia, to conform as nearly as practicable to the regulations for the government of the armies of the United States, and pass such laws to promote volunteer organizations as may afford them effectual encouragement.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 397; Vol. II, p. 1411.

§ 3. **Selection and commission of officers.** — All militia officers shall be commissioned by the governor, the manner of their selection to be provided by law, and may hold their commissions for such period of time as the legislature may provide.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 397; Vol. II, p. 1411.

§ 4. **Preservation of records, banners, and relics.** — All military records, banners, and relics of the state, except when in lawful use, shall be

preserved in the office of the adjutant general as an enduring memorial of the patriotism and valor of the soldiers of Idaho; and it shall be the duty of the legislature to provide by law for the safekeeping of the same.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 397; Vol. II, p. 1411.

§ 5. National and state flags only to be carried. — All military organizations under the laws of this state shall carry no other device, banner or flag, than that of the United States or the state of Idaho.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 397; Vol. II, p. 1412.

§ 6. Importation of armed forces prohibited. — No armed police force, or detective agency, or armed body of men, shall ever be brought into this state for the suppression of domestic violence except upon the application of the legislature, or the executive, when the legislature can not be convened.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1412.

Article XV

WATER RIGHTS

SECTION.

1. Use of waters a public use.
2. Right to collect rates a franchise.
3. Water of natural stream — Right to appropriate — State's regulatory power — Priorities.

SECTION.

4. Continuing rights to water guaranteed.
5. Priorities and limitations on use.
6. Establishment of maximum rates.
7. State Water Resource Agency.

§ 1. Use of waters a public use. — The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of all water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed by law.

Cross ref. Nature of property in water, § 42-101.

Comp. provisions: Cal. Art. 10, § 5.

Mont. Art. 9, § 3.

Cited in: Murray v. Pocatello, 226 U.S. 318, 33 S. Ct. 107, 57 L. Ed. 239 (1912); Boise City Irrigation & Land Co. v. Turner, 176 F. 373 (C.C.D. Idaho 1905); Boise City Irrigation & Land Co. v. Stewart, 10 Idaho 38, 77 P. 25 (1904); Hill v. Standard Mining Co., 12 Idaho 223, 85 P. 907 (1906); Bothwell v. Consumers' Co., 13 Idaho 568, 92 P. 533 (1907); Village of Twin Falls v. Stubbs, 15 Idaho 68, 96 P. 195 (1908); Hatch v. Consumers' Co., 17 Idaho 204, 104 P. 670, 40 L.R.A. (n.s.) 263 (1909);

Idaho Fruit Land Co. v. Great W. Beet Sugar Co., 17 Idaho 273, 105 P. 562 (1909); Brose v. Board of Dirs., 20 Idaho 281, 118 P. 504 (1911); City of Pocatello v. Murray, 21 Idaho 180, 120 P. 812 (1912); Walbridge v. Robinson, 22 Idaho 236, 125 P. 812, 43 L.R.A. (n.s.) 240 (1912); Feil v. Coeur d'Alene, 23 Idaho 32, 129 P. 643, 43 L.R.A. (n.s.) 1095 (1912); Brose v. Board of Dirs., 24 Idaho 116, 132 P. 799 (1913); Childs v. Neitzel, 26 Idaho 116, 141 P. 77 (1914); Nampa & Meridian Irrigation Dist. v. Petrie, 28 Idaho 227, 153 P. 425 (1915); Adams v. Twin Falls-Oakley Land & Water Co., 29 Idaho 357, 161 P. 322 (1916); Sandpoint Water & Light Co. v. City of

Sandpoint, 31 Idaho 498, 173 P. 972, 1918F L.R.A. 1106 (1918); Board of Dirs. v. Jorgensen, 64 Idaho 538, 136 P.2d 461 (1943); Martiny v. Wells, 91 Idaho 215, 419 P.2d 470 (1966); State ex rel. Tappan v. Smith, 92 Idaho 451, 444 P.2d 412 (1968); Nelson v. Marshall, 94 Idaho 726, 497 P.2d 47 (1972); Southern Idaho Fish & Game Ass'n v. Picobo Livestock, Inc., 96 Idaho 360, 528 P.2d 1295 (1974); Nettleton v. Higginson, 98 Idaho 87, 558 P.2d 1048 (1977); Hidden Springs Trout Ranch, Inc. v. Allred, 102 Idaho 623, 636 P.2d 745 (1981).

ANALYSIS

Application to other law.
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Application to Other Law.

Section 42-101, relating to nature of property in water, is in harmony with this section. Poole v. Olaveson, 82 Idaho 496, 356 P.2d 61 (1960).

Where conservation groups petitioned for leave to intervene in the Snake River Basin Adjudication (SRBA) to represent the interests of the public through the public trust doctrine, the district court did not err in denying the conservation groups' motion to intervene, concluding that the public trust doctrine is not an element of a water right used to determine the priority of that water right in relation to the competing claims of other water right claimants. Idaho Conservation League, Inc. v. State, 128 Idaho 155, 911 P.2d 748 (1995).

Appropriator and Consumer.

Appropriator does not acquire as an appurtenant to his water location the right to the current of a stream as a means of operating devices used to divert the water, nor is such current subject to appropriation as a water right. Schodde v. Twin Falls Land & Water Co., 161 F. 43 (9th Cir. 1908), aff'd, 224 U.S. 107, 32 S. Ct. 470, 56 L. Ed. 686 (1912).

Continued and uninterrupted use of water for more than five years constitutes valid

appropriation. Short v. Praisewater, 35 Idaho 691, 208 P. 844 (1922).

One who acquires the right to use water from an appropriator whose right was initiated by appropriation under this section is not the owner of the appropriation and does not acquire the rights of an appropriator but only the rights of a user or consumer as distributee of water under §§ 4 and 5 of this article. Nampa & Meridian Irrigation Dist. v. Barclay, 56 Idaho 13, 47 P.2d 916, 100 A.L.R. 557 (1935).

Where an irrigation district brought an action against a water master to require distribution in accordance with its adjudicated rights and joined as a defendant drainage district, the recipient of the water allegedly diverted from the irrigation district was not required to join as defendants water users of the drainage district, since their rights were dependent upon the rights of the drainage district from which they obtained use of the water, and they could have no defense not available to the drainage district. Nampa & Meridian Irrigation Dist. v. Barclay, 56 Idaho 13, 47 P.2d 916, 100 A.L.R. 557 (1935).

A water user who acquires his right through sale, rental, or distribution from a ditch or canal company or an irrigation or drainage district, does not acquire the rights of an appropriator of water, and thus is not entitled to the same consideration in litigation involving the original appropriation as is the company or district. Nampa & Meridian Irrigation Dist. v. Barclay, 56 Idaho 13, 47 P.2d 916, 100 A.L.R. 557 (1935).

Consumers of water who acquire their rights through an irrigation district, which is the appropriator and owner, have no rights which they can assert against other appropriators, and it is the business of the district under which they claim to protect the appropriation and defend it in any litigation that arises. Nampa & Meridian Irrigation Dist. v. Barclay, 56 Idaho 13, 47 P.2d 916, 100 A.L.R. 557 (1935).

Under § 18-4302 and the constitutional policy, it is the duty of the prior appropriator to allow the water, which he has the right to use, to flow down the channel for the benefit of junior appropriators at times when he has no immediate need for the use thereof. To allow a junior, or other, appropriator to establish an adverse right to such water during times when it is not required and not being used, by the original appropriator, on the theory that such adverse use was inconsistent with the right of the prior appropriator, would subvert the purpose of the law and encourage wasteful diversion and use of water in violation thereof. Mountain Home Irrigation Dist. v. Duffy, 79 Idaho 435, 319 P.2d 965 (1957).

Defendant irrigation district, having acquired by purchase the rights of the original appropriator and having itself made subse-

quent appropriations and purchases of water, stands in the position of appropriator for distribution to the landowners within the district within the meaning of this section. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

Beneficial Purposes.

Intended and actual use of waters for beneficial purposes is sufficient for appropriation and actual physical diversion of such waters is not required by this section. *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974).

Beneficial Use.

Where the state in § 67-4307 appropriated certain waters for scenic beauty and recreational purposes, this was a "beneficial" use provided for in this section. *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974).

Constitutional and Statutory Appropriators Distinguished.

This section does not prohibit the state from appropriating waters pursuant to valid legislation as there is no limitation therein to private parties as distinguished from the state. *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974).

Constitutional Right to Use Water.

Individuals comprising the public, who are in condition to use water, have a constitutional right to use water under such reasonable rules and regulations, and upon such payments as may be prescribed. *Wilterding v. Green*, 4 Idaho 773, 45 P. 134 (1896).

Constitution and laws specifically recognize the right to divert and appropriate unappropriated waters of any natural stream to beneficial uses, and that such right shall never be denied. Still such provisions of the Constitution and statute do not authorize a person to go upon private property of another for the purpose of making an appropriation. *Marshall v. Niagara Springs Orchard Co.*, 22 Idaho 144, 125 P. 208 (1912).

If one appropriates water for a beneficial use and then sells, rents or distributes it to others who apply it to such beneficial use, he has a valuable right which is entitled to protection as a property right. *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47, 1916F L.R.A. 756 (1915).

Construction in General.

Right to regulate and control manner and means of appropriating unappropriated waters of state is reserved to the state. *Speer v. Stephenson*, 16 Idaho 707, 102 P. 365 (1909).

All waters of state, when flowing in their natural channels, including waters of all natural springs and lakes, are property of state.

Short v. Praisewater, 35 Idaho 691, 208 P. 844 (1922).

Dedication.

Delivery of water to persons outside district when same is not needed by users within district is not dedication. *Yaden v. Gem Irrigation Dist.*, 37 Idaho 300, 216 P. 250 (1923).

To hold that property has been dedicated to public use is no trivial thing, and such dedication will not be presumed without evidence of unequivocal intention. *Humbird Lumber Co. v. Public Utils. Comm'n*, 39 Idaho 505, 228 P. 271 (1924).

Drainage of Waste Waters.

The policy of the state is to secure maximum beneficial and the least wasteful use of its waters; therefore, where springs which arose in defendant's land were tributary to creek, defendant could drain waste water into drainage system which substituted for natural channel of creek if drainage was without harm or damage to plaintiff. *Poole v. Olaveson*, 82 Idaho 496, 356 P.2d 61 (1960).

Priorities.

Although those using water for domestic purposes have preference over users claiming for any other purpose, this preference is limited by requirement of just compensation for the taking of private property for a public use when the water has already been appropriated for an inferior use. *Peck v. Sharrow*, 96 Idaho 512, 531 P.2d 1157 (1975).

Private Waters.

Ownership of water by state, and resulting right of appropriation, is confined to waters of natural streams, either surface or subterranean and does not extend to subterranean springs or percolating water situated entirely on private property and not flowing in natural channel. *Public Utils. Comm'n v. Natatorium Co.*, 36 Idaho 287, 211 P. 533 (1922).

If water impounded consists of a collection of flood waters from rains and melting snow that runs off in the winter and spring and does not actually comprise or enter any natural stream or body of water, it is the unqualified property of those who impound and store it and they may do with it as they see fit. It is not impressed with a public trust. *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935).

Reservoirs.

After water was diverted from a natural stream and stored in a reservoir it was no longer "public water," subject to diversion and appropriation under §§ 1, 2 and 3 of this article; the waters so impounded then became the property of the appropriators and owners of the reservoir impressed with a public trust to apply it to beneficial use. *Washington*

County Irrigation Dist. v. Talboy, 55 Idaho 382, 43 P.2d 943 (1935).

Spring Water.

Water of natural spring is public water and subject to valid appropriation to public use. Rabido v. Furey, 33 Idaho 56, 190 P. 73 (1920); Short v. Praisewater, 35 Idaho 691, 208 P. 844 (1922).

Waste Prohibited.

The policy of the law of this state is to secure the maximum use and benefit of its water resources. To effectuate this policy, the legislature has made it a misdemeanor to waste water from a stream, the waters of which are used for irrigation. Mountain Home Irrigation Dist. v. Duffy, 79 Idaho 435, 319 P.2d 965 (1957).

Water Companies.

Water supplied to city by public utility

company is devoted to public use and is under control of state. Rowland v. Kellogg Power & Water Co., 43 Idaho 643, 253 P. 840 (1927).

Private person can acquire no rights in water furnished city by public utility company. Rowland v. Kellogg Power & Water Co., 43 Idaho 643, 253 P. 840 (1927).

Water Rates.

In fixing water rates, valuation of water right for rate purposes should be based on present cost of storage water in a government reservoir or other new and independent source of supply and not the actual cost of acquiring the right. Capital Water Co. v. Public Utils. Comm'n, 44 Idaho 1, 262 P. 863 (1926).

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. I, p. 201; Vol. II, pp. 1115, 1183, 1185, 1237, 1343.

§ 2. Right to collect rates a franchise. — The right to collect rates or compensation for the use of water supplied to any county, city, or town, or water district, or the inhabitants thereof, is a franchise, and can not be exercised except by authority of and in the manner prescribed by law.

Cited in: Boise City Irrigation & Land Co. v. Turner, 176 F. 373 (C.C.D. Idaho 1905); Wilterding v. Green, 4 Idaho 773, 45 P. 134 (1896); Idaho Fruit Land Co. v. Great W. Beet Sugar Co., 17 Idaho 273, 105 P. 562 (1909); City of Pocatello v. Murray, 21 Idaho 180, 120 P. 812 (1912); Feil v. Coeur d'Alene, 23 Idaho 32, 129 P. 643, 43 L.R.A. (n.s.) 1095 (1912); Childs v. Neitzel, 26 Idaho 116, 141 P. 77 (1914); Murray v. Public Utils. Comm'n, 27 Idaho 603, 150 P. 47, 1916F L.R.A. 756 (1915); Sandpoint Water & Light Co. v. City of Sandpoint, 31 Idaho 498, 173 P. 972, 1918F L.R.A. 1106 (1918); Washington County Irrigation Dist. v. Talboy, 55 Idaho 382, 43 P.2d 943 (1935).

ANALYSIS

Charging of fee for franchise.
Compulsory service.
Irrigation districts.
Nature of right.
Surrender of right.

Charging of Fee for Franchise.

The charging of a fee for a utility franchise is reasonable compensation and consideration to the cities as expressly allowed by this section and § 40-2308. Alpert v. Boise Water Corp., 118 Idaho 136, 795 P.2d 298 (1990).

Compulsory Service.

Company in the enjoyment of its franchise privileges is placed by the Constitution under public duty to supply water to all living

within the franchise limits on payment of the rental rates. It can not be allowed in addition to these rates to require a citizen to pay for a part of its system before supplying him with water. Bothwell v. Consumers' Co., 13 Idaho 568, 92 P. 533, 24 L.R.A. (n.s.) 485 (1907).

Public service corporations must serve all persons without distinction or discrimination who pay and comply with reasonable rules. Hatch v. Consumers' Co., 17 Idaho 204, 104 P. 670, 40 L.R.A. (n.s.) 263 (1909), aff'd, 224 U.S. 148, 32 S. Ct. 465, 56 L. Ed. 703 (1912).

Irrigation Districts.

Irrigation districts are creatures of statute. They are quasi-public or municipal corporations and, as such, have only such powers as are given them by statute or necessarily implied therefrom. Yaden v. Gem Irrigation Dist., 37 Idaho 300, 216 P. 250 (1923).

Nature of Right.

Municipal grant of the right to occupy city streets with pipes of a water distributing system is, when accepted by grantee, not a mere revocable license, but is a substantial property right. Boise Artesian Hot & Cold Water Co. v. Boise City, 230 U.S. 84, 33 S. Ct. 997, 57 L. Ed. 1400 (1913).

This section simply defines the right to collect rates for a water supply as a franchise, and does not prohibit the legislature from passing a law compelling a water company to furnish a city with free water for fire purposes. City of Boise City v. Artesian Hot & Cold Water Co., 4 Idaho 351, 39 P. 562 (1895).

Right of public utility company to collect rates for supplying inhabitants of city is a franchise and can be exercised only in manner prescribed by law. *Rowland v. Kellogg Power & Water Co.*, 43 Idaho 643, 253 P. 840 (1927).

The highway district legislation contained in Title 40, Chapters 13 and 14, does not supersede the well-established law vesting power to grant franchises to utilities in the cities. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

Surrender of Right.

Cities have the right to own and operate utilities and provide those services to their residents, and their surrender of this right is valid consideration for the franchise fee charged to the utilities. *Alpert v. Boise Water Corp.*, 118 Idaho 136, 795 P.2d 298 (1990).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1115, 1183.

§ 3. Water of natural stream — Right to appropriate — State's regulatory power — Priorities. — The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes. Priority of appropriations shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose; and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district those using the water for mining purposes or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in section 14 of article I of this Constitution.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 3. The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied. Priority of appropriation shall give the better right as between those using the water; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall (subject to such limitations as may be prescribed by law) have the preference over those claiming for any other purpose. And those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. And in any organized mining district, those using the water for mining purposes, or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agricultural purposes. But the usage by such subsequent appropriators shall be subject to such provisions of law regulating the taking of private property for public and private use, as referred to in Section 14 of Article I of this Constitution."

It was amended, as proposed by S.L. 1927, p. 591, H.J.R. No. 13, and ratified at the general election in November, 1928, to read as it now appears.

Cross ref. Right to appropriate water, priorities, §§ 42-103 — 42-107.

Sec. to sec. ref. This section is referred to in § 42-1734A.

Cited in: *Twin Falls Salmon River Land & Water Co. v. Caldwell*, 242 F. 177 (9th Cir. 1917); *Hard v. Boise City Irrigation & Land Co.*, 9 Idaho 589, 76 P. 331, 65 L.R.A. 407 (1904); *Farmers Coop. Ditch Co. v. Riverside Irrigation Dist.*, 14 Idaho 450, 94 P. 761 (1908); *Brose v. Board of Dirs.*, 20 Idaho 281, 118 P. 504 (1911); *Lee v. Hanford*, 21 Idaho 327, 121 P. 558 (1912); *Marshall v. Niagara Springs Orchard Co.*, 22 Idaho 144, 125 P. 208 (1912); *Brose v. Board of Dirs.*, 24 Idaho 116, 132 P. 799 (1913); *Murray v. Public Utils. Comm'n*, 27 Idaho 603, 150 P. 47, 1916F L.R.A. 756 (1915); *Cohn v. Sorenson*, 38 Idaho 37, 219 P. 1059 (1923); *State ex rel. Tappan v. Smith*, 92 Idaho 451, 444 P.2d 412 (1968); *Stevenson v. Steele*, 93 Idaho 4, 453 P.2d 819 (1969); *Crow v. Carlson*, 107 Idaho 461, 690 P.2d 916 (1984).

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Beneficial Use.

Although the doctrine of beneficial use is a concept that is constitutionally recognized and that permeates Idaho's water code, the Idaho Constitution does not mandate that non-application to a beneficial use, for any period of time no matter how small, results in the loss or reduction of water rights. *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 947 P.2d 409 (1997).

Water rights in Idaho are not subject to statutory forfeiture for failure to beneficially apply water for a duration less than that provided for in Section 42-222(2). *State v. Hagerman Water Right Owners, Inc.*, 130 Idaho 736, 947 P.2d 409 (1997).

Change in Use.

This provision declares as one general division the use of water for mining or milling purposes connected with mining and the debates of the constitutional convention emphasize and make clear that the change from one kind of mining, or use in mining, or from one place to another in such connection, does not invalidate an appropriation for mining purposes. *Zezi v. Lightfoot*, 57 Idaho 707, 68 P.2d 50 (1937).

Constitutional and Statutory Appropriators Distinguished.

A person desiring to appropriate waters of a stream may do so either by actually diverting

the water and applying it to a beneficial use, or he may pursue the statutory method of posting and recording his notice and commencing and prosecuting his work within the statutory time. *Nielson v. Parker*, 19 Idaho 727, 115 P. 488 (1911).

By actually diverting and applying water to a beneficial use, a legal appropriation is made, notwithstanding that application was not made to the state engineer to prosecute such appropriation. *Furey v. Taylor*, 22 Idaho 605, 127 P. 676 (1912).

By actually diverting and applying water to a beneficial use, a legal appropriation is made, notwithstanding that application was not made to the state reclamation engineer to prosecute such appropriation. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964).

A person desiring to appropriate the waters of a stream may do so either by actually diverting the water and applying it to a beneficial use, or he may pursue the statutory method by making an application to the Department of Reclamation for a permit, and fulfilling the requirements of the permit. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964).

Construed.

Before any permit to appropriate water to a beneficial use can ripen into a right to use the water, it is basic that the permit holder must show a supply of unappropriated water. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964).

It is a fundamental concept that, under our constitution, water which has already been appropriated is not subject to appropriation by another, unless it has been abandoned by the original appropriator or his successor in interest. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964).

Where protestants asserted that water, which applicant had tried to appropriate by his permit, was seepage water to which they had superior rights through prior use and enjoyment, and there was no evidence as to the actual amount of water used by protestants over and above their decreed rights, or amount claimed at point of diversion that had not been adjudicated, the evidence was insufficient to establish that any of the protestants had abandoned any right to the use of their prior decreed rights. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964).

Easement to Fluctuate River Flow.

An easement which granted a power company the right to fluctuate the flow of a river would be construed as granting something in addition to the right of the power company to fill completely the natural channel of the river, since the power company had the latter right without the aid of an easement. *Griffeth*

v. Utah Power & Light Co., 226 F.2d 661 (9th Cir. 1955).

Eminent Domain.

Use of land necessary to develop power in streams of state capable of producing electrical energy is a public use for which condemnation will lie. *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931).

In General.

The right to appropriate unappropriated water is guaranteed by this section and it is clearly state policy that water be put to its maximum use and benefit. *Parker v. Wallentine*, 103 Idaho 506, 650 P.2d 648 (1982).

Irrigation Districts.

This section and §§ 4 and 5 of article 15 of the Constitution apply to irrigation districts. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

Legislative Control Defined.

While the legislature is given power to regulate manner and method of appropriating and applying to a beneficial use public waters of the state, they must do so in such manner that the right to divert and appropriate will not be denied. *Speer v. Stephenson*, 16 Idaho 707, 102 P. 365 (1909).

In view of this section, a statute regulating the allotment of the waters of a stream will not be construed as depriving an actual appropriator of water of his vested right to the use thereof. *Reno v. Richards*, 32 Idaho 1, 178 P. 81 (1918).

Negligence in Operation of Ditch.

The constitutional right of the owner of an irrigation ditch to divert and appropriate water does not free such owner from responsibility for negligence in the operation of such ditch. *Albrethson v. Carey Valley Reservoir Co.*, 67 Idaho 529, 186 P.2d 853 (1947).

Pollution of Streams.

This section does not authorize or permit parties engaged in mining or other occupations to fill up the natural channel of any of the streams of the state, or to pollute same with debris and poisonous substances to the injury of any other user of waters of the streams. *Hill v. Standard Mining Co.*, 12 Idaho 223, 85 P. 907 (1906).

This provision does not authorize such mining operations as fill the natural channel of a stream to the injury of any other user of its waters. While proper use of a stream for mining necessarily contaminates it to some extent, such deterioration of the quality of water can not go to such a degree as to inflict substantial injury on other users of the stream. *Ravndal v. Northfolk Placers*, 60 Idaho 305, 91 P.2d 368 (1939).

Preemption of Federal Law.

The Federal Power Act does preempt some state laws relating to the building of dams on navigable streams and particularly preempts those state laws which require a state license as a predicate for building a dam; however, state law regarding proprietary rights in water is expressly saved. *Idaho Power Co. v. State*, 104 Idaho 575, 661 P.2d 741 (1983).

Preferential Rights to Water.

The extent of beneficial use is an inherent and necessary limitation on the right to divert and appropriate water granted by this section. *Twin Falls Canal Co. v. American Falls Reservoir Dist. No. 2*, 59 F.2d 19 (9th Cir.), cert. denied, 287 U.S. 638, 53 S. Ct. 87, 77 L. Ed. 552 (1932).

Framers of the Constitution, in adopting this section, realized that in some sections of the state agriculture would predominate, and that use of water for such purposes should have a preference right in such sections, while in other sections mining would be the principal industry and would be entitled to a preference right. *Hill v. Standard Mining Co.*, 12 Idaho 223, 85 P. 907 (1906).

It was the intention of the framers of the Constitution, by provisions of this section, to provide that waters previously appropriated for manufacturing purposes may be taken and appropriated for domestic use, upon due and fair compensation therefor; but not to provide that water appropriated for manufacturing purposes could thereafter arbitrarily and without compensation be appropriated for domestic purposes. *Montpelier Milling Co. v. Montpelier*, 19 Idaho 212, 113 P. 741 (1911).

State authorities can not set aside provisions of Constitution by holding that state may reserve water for all state lands for an indefinite time. In case of a Carey act project where there is not enough water for reclamation of entire tract, state ought not to take water from settlers who had purchased same, and apply it to a later sale of school land. *State v. Twin Falls Salmon River Land & Water Co.*, 30 Idaho 41, 166 P. 220 (1916).

Under this section, those using water for domestic purposes have a preference over those claiming water for any other use. But in case the water has already been appropriated for another inferior use, the use for a superior purpose is subject to the provision of law regulating taking of private property for public use. *Basinger v. Taylor*, 30 Idaho 289, 164 P. 522 (1917).

—“Amnesty” Statutes.

The “amnesty” statutes, §§ 42-1425, 42-1426, 42-1427, are constitutional as written and must be given due deference and respect. *Fremont-Madison Irrigation Dist. & Mitigation Group v. Idaho Ground Water Appropri-*

ators, Inc., 129 Idaho 454, 926 P.2d 1301 (1996).

Priorities.

Under doctrine of priority here promulgated, a subsequent appropriator is not entitled to a part of the flow of a prior user in low water season. *Cottonwood Water & Light Co. v. St. Michael's Monastery*, 29 Idaho 761, 162 P. 242 (1916).

A valid appropriation of percolating subterranean waters, made either by statutory permit method or by actual diversion and beneficial use, gives priority over a subsequent valid appropriation, however made. *Silkey v. Tiesgs*, 51 Idaho 344, 5 P.2d 1049 (1931).

It can make no difference to the appropriator of water, whether he gets the water from one stream or another, or from the pooled waters of a lake or reservoir, so long as it is delivered to him at the times and under the priorities to which he is entitled, and this is equally true whether he be himself an original locator, appropriator and diverter of the waters. *Board of Dirs. v. Jorgensen*, 64 Idaho 538, 136 P.2d 461 (1943).

Priority of appropriation gives the better right between those using the water. *Beecher v. Cassia Creek Irrigation Co.*, 66 Idaho 1, 154 P.2d 507 (1944).

Plaintiff, who had prior decreed rights to water was entitled to recover damages from defendants for loss or damage to plaintiff's crops proximately caused by acts of defendants, which deprived plaintiff of the waters decreed to his land, and to the use of which he was entitled. *Follett v. Taylor Bros.*, 77 Idaho 416, 294 P.2d 1088 (1956).

A subsequent appropriator attempting to justify his diversion has the burden of proving that it will not injure prior appropriations. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964).

Evidence sustained finding of lower court that source of water appellant sought to appropriate had previously been appropriated and that there was no public water available for appropriation from source mentioned in appellant's permit. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964).

That another appropriator had an earlier right to water from a creek than plaintiff and the filling of that right during a portion of the season would leave no water for plaintiff did not affect plaintiff's priority as to defendant, but plaintiff was entitled to his quota from the excess after filling the earlier appropriator's right without diversion by defendant. *Martiny v. Wells*, 91 Idaho 215, 419 P.2d 470 (1966).

Where village duly appropriated to its beneficial use all water, which was public, from certain springs, and no other persons had ever appropriated this water to beneficial use,

village acquired right to use all the water from these springs. *Village of Peck v. Denison*, 92 Idaho 747, 450 P.2d 310 (1969).

Priority in time is an essential part of western water law and to diminish one's priority works an undeniable injury to that water right holder. *Jenkins v. State*, Dep't of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982).

If a senior right has been abandoned or forfeited, the priority of the original appropriator is lost and the junior appropriators move up the ladder of priority. Hence if a senior right which had been forfeited or abandoned were allowed to be reinstated through a transfer proceeding, clearly injury would result to otherwise junior appropriators. *Jenkins v. State*, Dep't of Water Resources, 103 Idaho 384, 647 P.2d 1256 (1982).

An appropriator, whose right is based upon a valid, although unadjudicated, constitutional method of appropriation, retains a senior claim in relation to a person holding a later issued permit. *R.T. Nahas Co. v. Hulet*, 114 Idaho 23, 752 P.2d 625 (Ct. App. 1988).

—Damages.

Where the water right of the upstream appropriator with a valid permit was junior to that of the downstream appropriator with constitutional water rights, and the former's impoundment of water interfered with the latter's senior entitlement, the upstream appropriator was liable for any damages caused by the wrongful interference. *R.T. Nahas Co. v. Hulet*, 114 Idaho 23, 752 P.2d 625 (Ct. App. 1988).

—Public Trust Doctrine.

Where conservation groups petitioned for leave to intervene in the Snake River Basin Adjudication (SRBA) to represent the interests of the public through the public trust doctrine, the district court did not err in denying the conservation groups' motion to intervene, concluding that the public trust doctrine is not an element of a water right used to determine the priority of that water right in relation to the competing claims of other water right claimants. *Idaho Conservation League, Inc. v. State*, 128 Idaho 155, 911 P.2d 748 (1995).

Public or Private Waters.

Constitutional right to "divert and appropriate the unappropriated waters of any natural stream for beneficial uses" does not extend to private waters, such as private ponds, artificial lakes or wells owned by private persons and formed by collecting and impounding surface water. The fact that he may not use it for irrigation or any other commercial purpose does not render it any less his property or authorize any one else to invade his property or appropriate and divert same.

King v. Chamberlin, 20 Idaho 504, 118 P. 1099 (1911).

This section relates to public unappropriated waters of state as distinguished from private property. It does not authorize one man to appropriate or divert property of another. Public Utils. Comm'n v. Natatorium Co., 36 Idaho 287, 211 P. 533 (1922).

Mere percolating waters or water gathered in wells upon land of owner of fee are not subject to appropriation, either under Constitution or statutes. Public Utils. Comm'n v. Natatorium Co., 36 Idaho 287, 211 P. 533 (1922).

It is not incumbent on owner of fee to establish that percolating water on his land is not part of subterranean stream or lake. Such burden rests upon party seeking to make appropriation. Public Utils. Comm'n v. Natatorium Co., 36 Idaho 287, 211 P. 533 (1922).

It is well settled that the waters of natural springs, which form a natural stream or streams flowing off the premises on which they arise, are public waters subject to acquirement by appropriation, diversion and application to a beneficial use. Maher v. Gentry, 67 Idaho 559, 186 P.2d 870 (1947).

Reservoirs.

After water was diverted from a natural stream and stored in a reservoir it was no longer "public water," subject to diversion and appropriation under §§ 1, 2 and 3 of this article; the waters so impounded then became the property of the appropriators and owners of the reservoir impressed with a public trust to apply it to beneficial use. Washington County Irrigation Dist. v. Talbo, 55 Idaho 382, 43 P.2d 943 (1935).

Rights of Consumer.

Water consumer who acquires the right to use water from an appropriator whose right was initiated under § 1 of this article is not the owner of the appropriation and does not acquire the rights of an appropriator conferred by § 3, but he simply acquires the rights of a user and consumer under §§ 4 and 5. Nampa & Meridian Irrigation Dist. v. Barclay, 56 Idaho 13, 47 P.2d 916, 100 A.L.R. 557 (1935).

Riparian Rights.

The current of a river can not be appropriated by a riparian proprietor to the extent necessary to operate a water wheel used to divert water beneficially applied, so as to give him a right of action for the destruction of the current by subsequent appropriators, when exercising their right under this section to apply the unused water to beneficial uses, even assuming the coexistence of a system of riparian rights and the doctrine of appropriation. Schodde v. Twin Falls Land & Water

Co., 224 U.S. 107, 32 S. Ct. 470, 56 L. Ed. 686 (1912).

The common-law rule respecting riparian water rights never obtained in Idaho or Utah, wherein the rule is that one appropriating water first has the better right thereto. Albion-Idaho Land Co. v. Naf Irrigation Co., 97 F.2d 439 (10th Cir. 1938). Compare, however, Jones v. McIntire, 60 Idaho 338, 91 P.2d 373 (1939).

The current of a river cannot be appropriated by a riparian proprietor in Idaho, even assuming the possible persistence in that state of the doctrine of riparian rights, in view of statutes declaring the right of appropriators of water for irrigation or other lawful purpose to use the channel of natural streams for carrying stored water or water diverted from other streams. Johnson v. Utah Power & Light Co., 215 F.2d 814 (9th Cir. 1954).

Riparian proprietor in the state of Idaho has no right in or claim to waters of a stream flowing by or through his lands that he can successfully assert as being prior or superior to the rights and claims of one who has appropriated or diverted water of the stream and is applying it to beneficial use. To this extent, therefore, the common law doctrine of riparian right is in conflict with the Constitution and statutes of this state and has been abrogated thereby. Hutchinson v. Watson Slough Ditch Co., 16 Idaho 484, 101 P. 1059, 133 Am. St. R. 125 (1909).

But a riparian owner still retains such right to have the waters flow in the natural stream through or by his premises which he may protect in the courts as against persons interfering with the natural flow or who attempt to divert or cut off the same wrongfully and arbitrarily and without doing so under any right of location, appropriation, diversion or use, and who do not rest their right to do so upon any right of use or appropriation. Hutchinson v. Watson Slough Ditch Co., 16 Idaho 484, 101 P. 1059, 133 Am. St. R. 125 (1909).

Riparian rights have been abrogated in Idaho. Jones v. McIntire, 60 Idaho 338, 91 P.2d 373 (1939). Compare Albion-Idaho Land Co. v. Naf Irrigation Co., 97 F.2d 439 (10th Cir. 1938), declaring that riparian rights never existed in Idaho.

Where record failed to show that respondent's predecessor in interest actually diverted the water in question and put it to the beneficial use, respondent could claim rights by appropriation antedating its ownership of the property. Glenn Dale Ranches, Inc. v. Shaub, 94 Idaho 585, 494 P.2d 1029 (1972).

Scenic Beauty and Recreational Purposes.

The uses for diversion of water set out in this section are not exclusive and therefore

the appropriation for scenic beauty and recreational purposes under § 67-4307 does not violate this section. *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974).

Stock Watering.

For purposes of watering stock, no diversion from a natural watercourse should be required to establish a constitutional appropriation of water. *R.T. Nahas Co. v. Hulet*, 106 Idaho 37, 674 P.2d 1036 (Ct. App. 1983), modified on other grounds, 114 Idaho 23, 752 P.2d 625 (Ct. App. 1988).

Subordination of Rights.

When the federal power commission (now federal energy regulatory commission) authorized the obtention of only subordinated state water rights, and where the state and the licensee power company both intended the subordination of those water rights, failure to include a subordination clause in the state water licenses did not render those rights unsubordinated. *Idaho Power Co. v. State*, 104 Idaho 575, 661 P.2d 741 (1983).

There is nothing in the law of Idaho which precludes a person from voluntarily obtaining less than the full panoply of rights associated with the ownership of real property and a voluntary subordination agreement is not in violation of Idaho's water law. Therefore there was no conflict between state water law and the language of the subordination clause inserted in the licenses issued by federal power commission to power company in connection with the Hells Canyon hydroelectric project. *Idaho Power Co. v. State*, 104 Idaho 575, 661 P.2d 741 (1983).

Subterranean Waters.

Percolating water is subject to appropriation and diversion and application to beneficial use is sufficient appropriation. *Silkey v. Tieg*s, 51 Idaho 344, 5 P.2d 1049 (1931).

Title to Land.

Under this section, with provisions in accordance with customs and rules governing appropriation of water, the ownership of the title to the lands for which water is appropriated is of no importance in determining the right to the water. *Sarret v. Hunter*, 32 Idaho 536, 185 P. 1072 (1919).

Trespass, Rights in Water.

Under this section and the statute, one having no right or title to land upon which a waterfall is located, who surveyed a powersite and rights of way necessary from the highway, without entering defendant's land, was entitled to a permit upon filing an application for a permit to put it to a beneficial use. *Bassett v. Swenson*, 51 Idaho 256, 5 P.2d 722 (1931).

Rights in water can not be initiated in

trespass, but where water flows off of the lands where it originates, then it becomes "public" water subject to lawful appropriation. *Jones v. McIntire*, 60 Idaho 338, 91 P.2d 373 (1939).

Water Conservation Board.

The legislature is empowered to create a board, commission, bureau, or department, such as a state water conservation board, attempted to be created by Session Laws 1935 (1st E.S.), ch. 60, and arm it with administration and governmental powers, such as power to make surveys and investigations as to water supply, waste and loss, and methods of conservation, but this is the extent of the power to so create. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974); *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

A statute creating state water conservation board, authorized to condemn water rights and appropriate unappropriated public waters, violates this provision respecting the guaranty of right to divert and appropriate unappropriated waters. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974); *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Opinions of Attorney General. The rights to the use of all hot waters that rise and flow at Lava Hot Springs are water rights that have been appropriated under state law and are subject to regulation by the Idaho Department of Water Resources under the provisions of title 42 of the Idaho Code (§§ 42-101, 42-103, 42-104 and 42-106). OAG 97-1.

The Lava Springs Foundation has the authority under title 67, chapter 44, Idaho Code, to enter into agreements involving easements with private parties to discharge the Foundation's waste water. However, the Foundation may not authorize the use of any portion of its water in a manner that is inconsistent with its state water right. Other parties seeking to use the Foundation's waste water for new uses or on lands other than the authorized place of use must file for a permit from the Idaho Department of Water Resources. OAG 97-1.

The language in § 67-4403 placing jurisdiction and control of the hot springs and hot waters under the direction of the Lava Hot Springs Foundation is intended to refer to only those waters lawfully appropriated under state law. OAG 97-1.

Since Idaho law, this section and §§ 42-101, 42-103, 42-104 and 42-106, specifies the law

of prior appropriation as the method to establish the right to use water in Idaho, absent a clear statutory expression by the legislature to create an exception to the appropriation statutes, all rights to the use of water in Idaho must be acquired by appropriation and the language in §§ 67-4401 and 67-4403 is not a clear expression that the legislature intended to create an exception from the appropriation process for the waters at Lava Hot Springs as the most reasonable interpretation of this language is that the Foundation's jurisdiction and control over waters at Lava Hot Springs refers to those waters that have already been

appropriated or that will be appropriated in the future. OAG 97-1.

The use of the terms "water rights" and "appurtenant" in sections 58-703 and 58-704 in reference to the lands at Lava Springs is a strong indicator that the Lava Springs Foundation merely controlled the use of the water under a traditional state water right that is appurtenant to lands at Lava Hot Springs. OAG 97-1.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1115, 1154, 1183, 1330, 1331, 1340, 1350.

§ 4. Continuing rights to water guaranteed. — Whenever any waters have been, or shall be, appropriated or used for agricultural purposes, under a sale, rental, or distribution thereof, such sale, rental, or distribution shall be deemed an exclusive dedication to such use; and whenever such waters so dedicated shall have once been sold, rented or distributed to any person who has settled upon or improved land for agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his heirs, executors, administrators, successors, or assigns, shall not thereafter, without his consent, be deprived of the annual use of the same, when needed for domestic purposes, or to irrigate the land so settled upon or improved, upon payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use, as may be prescribed by law.

Cited in: *Wilterding v. Green*, 4 Idaho 773, 45 P. 134 (1896); *Hailey v. Riley*, 14 Idaho 499, 95 P. 692 (1908); *Gerber v. Nampa & Meridian Irrigation Dist.*, 16 Idaho 1, 100 P. 80 (1908); *Knowles v. New Sweden Irrigation Dist.*, 16 Idaho 217, 101 P. 81 (1908); *Idaho Fruit Land Co. v. Great W. Beet Sugar Co.*, 17 Idaho 273, 105 P. 562 (1909); *Gerber v. Nampa & Meridian Irrigation Dist.*, 19 Idaho 765, 116 P. 104 (1911); *Russell v. Irish*, 20 Idaho 194, 118 P. 501 (1911); *Hewitt v. Great W. Beet Sugar Co.*, 20 Idaho 235, 118 P. 296 (1911); *Paddock v. Clark*, 22 Idaho 498, 126 P. 1053 (1912); *Nampa & Meridian Irrigation Dist. v. Briggs*, 27 Idaho 84, 147 P. 75 (1915); *Bennett v. Twin Falls North Side Land & Water Co.*, 27 Idaho 643, 150 P. 336 (1915); *Ireton v. Idaho Irrigation Co.*, 30 Idaho 310, 164 P. 687 (1917); *Follett v. Taylor Bros.*, 77 Idaho 416, 294 P.2d 1088 (1956).

Cross ref. See note to Art. 15, § 3 under heading "Title to Land." *Sarret v. Hunter*, 32 Idaho 536, 185 P. 1072 (1919).

ANALYSIS

Change of ownership.
Change of use.
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Deliveries limited by capacity.
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Due process.
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Necessity of patent.
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Change of Ownership.

Mortgage upon property of an irrigation canal company might be foreclosed, and water furnished would still be appurtenant to the lands to which it had once been applied, upon payment of the charges. *Hobbs v. Twin Falls Canal Co.*, 24 Idaho 380, 133 P. 899 (1913).

Change of Use.

This section does not require water to be used on the land where it is first taken, nor prohibit the change of the place of use, nor deny to the user a property right in the water which he takes from a canal. *Hard v. Boise City Irrigation & Land Co.*, 9 Idaho 589, 76 P. 331, 65 L.R.A. 407 (1904).

Construed.

This section must be read and construed with art. 15, § 5. It deals chiefly with the

ditch or canal owner, while § 5 deals chiefly with the subject of priorities as between water users and consumers who have settled under these ditches and canals and who expect to receive water under a "sale, rental, or distribution thereof." *Mellen v. Great W. Beet Sugar Co.*, 21 Idaho 353, 122 P. 30, 1913D Ann. Cas. 621 (1912).

It is fundamental principle of Idaho irrigation law that one who lawfully makes beneficial use of water upon land acquires right to its use. *Sanderson v. Salmon River Canal Co.*, 34 Idaho 303, 200 P. 341, 26 A.L.R. 292 (1921), appeal dismissed, 260 U.S. 755, 43 S. Ct. 94, 67 L. Ed. 497 (1922).

This section has been substantially reenacted by statute. *Yaden v. Gem Irrigation Dist.*, 37 Idaho 300, 216 P. 250 (1923).

It is a fundamental concept that, under our Constitution, water which has already been appropriated is not subject to appropriation by another, unless it has been abandoned by the original appropriator or his successor in interest. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964).

Where protestants asserted that water, which applicant had tried to appropriate by his permit, was seepage water to which they had superior rights through prior use and enjoyment, and there was no evidence as to the actual amount of water used by protestants over and above their decreed rights, or amount claimed at point of diversion that had not been adjudicated; the evidence was insufficient to establish that any of the protestants had abandoned any right to the use of their prior decreed rights. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964).

Decreed Water Right.

Appellant's decreed water right constitutes real property and such right is appurtenant to appellants' land to which the water represented thereby has been beneficially applied. *Anderson v. Cummings*, 81 Idaho 327, 340 P.2d 1111 (1959).

Dedication.

A bill or complaint seeking an adjudication of water rights as against the United States, as having been "dedicated" under this section, was properly dismissed for failure to allege or prove that the plaintiff had paid anything for the rights claimed to have been "dedicated," since gratuitous distribution of water does not constitute "dedication." *American Falls Reservoir Dist. No. 2 v. Crandall*, 85 F.2d 864 (9th Cir. 1936).

If waters received and used applied by a subsequent settler and claimant are a part of the waters included within the appropriation of prior claimants, and are merely waters they are not, for the time, using or claiming, then the dedication and right to the subsequent use thereof only goes to such waters,

and merely constitutes a claim for the use of such waters as are not needed or applied by prior consumers at any given time. *Niday v. Barker*, 16 Idaho 73, 101 P. 254 (1909).

Where water has been delivered to lands under rental and distribution, and has been used and applied by the land owner under such rental for the purposes of raising crops, the right to such use becomes a dedication within the meaning of this section and the user and consumer is entitled to the continued use thereafter on payment of the rental rates established in conformity with law. *Niday v. Barker*, 16 Idaho 73, 101 P. 254 (1909).

The fact that a canal company has furnished and delivered water to a consumer for the purpose of raising crops so as to amount to a dedication of the use raises the prima facie presumption that the company had that quantity of water over and above the amount required and previously appropriated and dedicated to other users and consumers from the same canal. *Niday v. Barker*, 16 Idaho 73, 101 P. 254 (1909).

Delivery of water to outsider when not needed by users within district is not dedication. *Yaden v. Gem Irrigation Dist.*, 37 Idaho 300, 216 P. 250 (1923).

Irrigation district acquiring system that has heretofore furnished water to settlers outside district and who have vested right thereto is compelled to continue delivering such water, but one originally furnishing water to only settlers within district can not be compelled to furnish water outside. *Yaden v. Gem Irrigation Dist.*, 37 Idaho 300, 216 P. 250 (1923).

Gratuitous distribution of water does not constitute a dedication under this section. *Vinyard v. North Side Canal Co.*, 38 Idaho 73, 223 P. 1072 (1923).

Deliveries Limited by Capacity.

Canal company can not be compelled by mandate to make regular deliveries of water beyond the capacity of the canal. The canal company must respect the rights of prior users of water, and one desiring to use water can not compel a canal company to sell water beyond the capacity of its canal. *Gerber v. Nampa & Meridian Irrigation Dist.*, 16 Idaho 1, 100 P. 80 (1908).

Where all available water under a Carey project has been disposed of to bona fide settlers, further sales will not be allowed when they would have effect of diminishing prior rights and diverting water necessary to cultivation of original lands. *Boley v. Twin Falls Canal Co.*, 37 Idaho 318, 217 P. 258 (1923).

Determination of Conflicting Claims.

The government is a necessary party to a suit under the Idaho statute for a summary

supplemental adjudication of water rights under a contract between plaintiff and the secretary of the interior. *American Falls Reservoir Dist. No. 2 v. Crandall*, 82 F.2d 973 (9th Cir. 1936), modified on other grounds, 85 F.2d 864 (9th Cir. 1936).

The United States is an indispensable party in a suit by an irrigation district, which held a contract with the United States for the use of a proportionate part of stored water appropriated by the United States to the extent of the capacity of headworks serving the district, notwithstanding that the secretary of interior, through whom the contract was executed and in whom the right of appropriation had been adjudicated by a prior decree of a state court, was joined as a defendant. *American Falls Reservoir Dist. No. 2 v. Crandall*, 82 F.2d 973 (9th Cir. 1936), modified on other grounds, 85 F.2d 864 (9th Cir. 1936).

In order for land owners to be bound by an order or judgment or decree, they or their predecessors in title must be parties to the action. *Scott v. Nampa Meridian Irrigation Dist.*, 55 Idaho 672, 45 P.2d 1062 (1934).

Due Process.

Individual water rights are real property rights which must be afforded the protection of due process of law before they may be taken by the state. *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977).

Irrigation Districts.

This section and §§ 4 and 5 of article 15 of the Constitution apply to irrigation districts. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

Necessity of Patent.

Issuance of patent to land by secretary of interior is not condition precedent to vested right to water in settler under Carey act project. *Sanderson v. Salmon River Canal Co.*, 34 Idaho 303, 200 P. 341, 26 A.L.R. 292 (1921), appeal dismissed, 260 U.S. 755, 43 S. Ct. 94, 67 L. Ed. 497 (1922).

Payment Condition Precedent.

While this section secures to every one who has rented water the right to rent same from year to year, yet his right to water for any given year depends upon his compliance with statutory enactments regulating the payment of compensation or tender of security therefor, and no action to confirm his right to such water accrues in his favor until he has paid, or tendered security for, such compensation. *Bardsly v. Boise City Irrigation & Land Co.*, 8 Idaho 155, 67 P. 428 (1901).

In view of this provision and provisions of the statutes, a contract between an irrigation company and a purchaser of water rights that no water should be delivered to the latter

until maintenance assessments for the current year have been paid to the company is valid. *Parrott v. Twin Falls Salmon River Land & Water Co.*, 32 Idaho 759, 188 P. 451 (1920).

Irrigation company is without authority to withhold delivery of water on account of non-payment of past due assessments. *Parrott v. Twin Falls Salmon River Land & Water Co.*, 32 Idaho 759, 188 P. 451 (1920); *Reynolds v. North Side Canal Co.*, 36 Idaho 622, 213 P. 344 (1923).

Upon proper demand and tender of payment of assessment for current year, stockholder may compel delivery of water by writ of mandamus. *Reynolds v. North Side Canal Co.*, 36 Idaho 622, 213 P. 344 (1923).

Regulations of Mutual Irrigation Company.

Where plaintiff was a member of a mutual irrigation company and there was no refusal to supply plaintiff with water but a refusal to supply such water contrary to the regulations of the company with which plaintiff refused to comply no question arose under this section but only question to determine was the reasonableness of the regulations. *Gasser v. Garden Water Co.*, 81 Idaho 421, 346 P.2d 592 (1959).

Rights of Consumer.

A water consumer who acquires the right to use water from another is not the owner of the appropriation, and does not require the rights of an appropriator, but simply acquires the rights of a user or consumer under the one from whom he acquired the water. *Nampa & Meridian Irrigation Dist. v. Barclay*, 56 Idaho 13, 47 P.2d 916, 100 A.L.R. 557 (1935).

Consumers of water who acquire their rights through an irrigation district, which is the appropriator and owner, have no rights which they can assert against other appropriators, and it is the business of the district under which they claim to protect the appropriation and defend it in any litigation that arises. *Nampa & Meridian Irrigation Dist. v. Barclay*, 56 Idaho 13, 47 P.2d 916, 100 A.L.R. 557 (1935).

Vested Rights.

Neither the district, the state, nor the United States can take existing vested water rights without payment of just compensation therefor. *Board of Dirs. v. Jorgensen*, 64 Idaho 538, 136 P.2d 461 (1943).

The owners of the old lands, through and by means of the irrigation district, acquired, and for many years applied to the irrigation of their lands, valuable water rights which had become appurtenant and dedicated to their lands and which were held in trust by the district for their use: they could not thereafter, without their consent, be deprived of the

use of that water when needed to irrigate their lands. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

Water Conservation Board.

The people of Idaho in adopting the Constitution thought it a matter of primary importance that they insert this section as an express prohibition against the legislature ever, by any kind of legislation, taking away from the humblest settler the right to "divert and appropriate" any of the "unappropriated waters of any natural stream to beneficial use." The legislature can not circumvent that purpose by creating either a state agency or a

special corporation and vesting it with power to appropriate and sell the unappropriated waters of the state or condemn waters already appropriated, as is attempted by § 15 of the statute of 1935, (act unconstitutional) creating the state water conservation board. *State Water Conservation Bd. v. Enking*, 56 Idaho 722, 58 P.2d 779 (1936), overruled on other grounds, *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974); *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1177, 1184.

§ 5. Priorities and limitations on use. — Whenever more than one person has settled upon, or improved land with the view of receiving water for agricultural purposes, under a sale, rental, or distribution thereof, as in the last preceding section of this article provided, as among such persons, priority in time shall give superiority of right to the use of such water in the numerical order of such settlements or improvements; but whenever the supply of such water shall not be sufficient to meet the demands of all those desiring to use the same, such priority of right shall be subject to such reasonable limitations as to the quantity of water used and times of use as the legislature, having due regard both to such priority of right and the necessities of those subsequent in time of settlement or improvement, may by law prescribe.

Cross ref. Priorities, §§ 42-106, 42-107.

Cited in: *Wilterding v. Green*, 4 Idaho 773, 45 P. 134 (1896); *Hard v. Boise City Irrigation & Land Co.*, 9 Idaho 589, 76 P. 331, 65 L.R.A. 407 (1904); *Gerber v. Nampa & Meridian Irrigation Dist.*, 16 Idaho 1, 100 P. 80 (1908); *Gerber v. Nampa & Meridian Irrigation Dist.*, 19 Idaho 765, 116 P. 104 (1911); *Brose v. Board of Dirs.*, 24 Idaho 116, 132 P. 799 (1913); *Bennett v. Twin Falls North Side Land & Water Co.*, 27 Idaho 643, 150 P. 336 (1915).

ANALYSIS

Artificial condition of stream.

Construed.

Determination of conflicting claims.

Irrigation districts.

Priority.

—Public trust doctrine.

Rights of consumer.

Title to land.

Vested rights.

Artificial Condition of Stream.

Others have right to use stream in artificial condition created by construction of dam so long as they do not injure or interfere with owner of dam in diverting water. *Twin Falls Canal Co. v. American Falls Reservoir Dist.* No. 2, 49 F.2d 632 (D. Idaho 1931), aff'd, 59

F.2d 19 (9th Cir. 1932), cert. denied, 287 U.S. 638, 53 S. Ct. 87, 77 L. Ed. 552 (1932).

Construed.

It is a fundamental concept that, under our Constitution, water which has already been appropriated is not subject to appropriation by another, unless it has been abandoned by the original appropriator or his successor in interest. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964).

Where protestants asserted that water, which applicant had tried to appropriate by his permit, was seepage water to which they had superior rights through prior use and enjoyment, and there was no evidence as to the actual amount of water used by protestants over and above their decreed rights, or amount claimed at point of diversion that had not been adjudicated, the evidence was insufficient to establish that any of the protestants had abandoned any right to the use of their prior decreed rights. *Cantlin v. Carter*, 88 Idaho 179, 397 P.2d 761 (1964).

Determination of Conflicting Claims.

Land owners are not bound by an order or judgment or decree, entered in an action determining priorities in the use of water when neither they nor their predecessors in title were parties thereto. *Scott v. Nampa &*

Meridian Irrigation Dist., 55 Idaho 672, 45 P.2d 1062 (1934).

Irrigation Districts.

This section and §§ 3 and 4 of article 15 of the Constitution apply to irrigation districts. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

Priority.

One who actually settles upon or improves land lying under a canal or irrigation ditch with a view to receiving water therefrom for agricultural purposes is entitled to a priority over one who has previously purchased a water right from such canal company but who has failed to either settle upon or improve the land as required by the provisions of this section. *Mellen v. Great W. Beet Sugar Co.*, 21 Idaho 353, 122 P. 30, 1913D Ann. Cas. 621 (1912).

As between the various classes of users of water under an irrigation system emanating from the Boise river the rights of the various users would appear to be governed by the doctrine that priority in use, or first in time of use, gives superiority of right. *Scott v. Nampa & Meridian Irrigation Dist.*, 55 Idaho 672, 45 P.2d 1062 (1934).

Neither the district, the state, nor the United States can take existing vested water rights without payment of just compensation therefor. *Board of Dirs. v. Jorgensen*, 64 Idaho 538, 136 P.2d 461 (1943).

Plaintiff, who had prior decreed rights to water was entitled to recover damages from defendants for loss or damage to plaintiff's crops proximately caused by acts of defendants, which deprived plaintiff of the waters decreed to his land, and to the use of which he was entitled. *Follett v. Taylor Bros.*, 77 Idaho 416, 294 P.2d 1088 (1956).

The use of the water by owners of old land in water district for many years gave them superiority of right to use of such water over owners of new lands entering water district by later annexation. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

The court recognizes the right acquired by the owners of new lands, by their inclusion within the district, to the use of any water owned by the district when the use thereof is not required for the proper irrigation of the old lands, and when such use is not in conflict with the rights previously acquired by the owners of the old lands, or when such use is not in derogation or impairment of such prior rights. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

—Public Trust Doctrine.

Where conservation groups petitioned for leave to intervene in the Snake River Basin Adjudication (SRBA) to represent the interests of the public through the public trust doctrine, the district court did not err in denying the conservation groups' motion to intervene, concluding that the public trust doctrine is not an element of a water right used to determine the priority of that water right in relation to the competing claims of other water right claimants. *Idaho Conservation League, Inc. v. State*, 128 Idaho 155, 911 P.2d 748 (1995).

Rights of Consumer.

One acquiring the right to use water from an appropriator whose right was initiated under § 1 of this article simply acquires the right of a user or consumer, as distributee of water under §§ 4 and 5. *Nampa & Meridian Irrigation Dist. v. Barclay*, 56 Idaho 13, 47 P.2d 916, 100 A.L.R. 557 (1935).

Consumers of water who acquire their rights through an irrigation district, which is the appropriator and owner, have no rights which they can assert against other appropriators, and it is the business of the district under which they claim to protect the appropriation and defend it in any litigation that arises. *Nampa & Meridian Irrigation Dist. v. Barclay*, 56 Idaho 13, 47 P.2d 916, 100 A.L.R. 557 (1935).

Title to Land.

Under this section, with provisions in accordance with customs and rules governing appropriation of water, the ownership of the title to the lands for which water is appropriated is of no importance in determining the right to the water. *Sarret v. Hunter*, 32 Idaho 536, 185 P. 1072 (1919).

Vested Rights.

The owners of the old lands, through and by means of the irrigation district, acquired, and for many years applied to the irrigation of their lands, valuable water rights which had become appurtenant and dedicated to their lands and which were held in trust by the district for their use: they could not thereafter, without their consent, be deprived of the use of that water when needed to irrigate their lands. *Bradshaw v. Milner Low Lift Irrigation Dist.*, 85 Idaho 528, 381 P.2d 440 (1963).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1179, 1184.

§ 6. Establishment of maximum rates. — The legislature shall provide by law, the manner in which reasonable maximum rates may be

established to be charged for the use of water sold, rented, or distributed for any useful or beneficial purpose.

Cited in: Boise City Irrigation & Land Co. v. Turner, 176 F. 373 (C.C.D. Idaho 1905); Wilterding v. Green, 4 Idaho 773, 45 P. 134 (1896); Feil v. Coeur d'Alene, 23 Idaho 32, 129 P. 643, 43 L.R.A. (n.s.) 1095 (1912); Nampa & Meridian Irrigation Dist. v. Briggs, 27 Idaho 84, 147 P. 75 (1915).

ANALYSIS

Fixing rates.

Method of fixing rates.

Reasonable rates guaranteed.

Requirement of free water.

Fixing Rates.

This section authorizes legislature to provide manner in which water rates may be established, and, by necessary implication, prohibits legislature from fixing such rates as they attempted to do by S.L. 1897, p. 52. *Wilson v. Perrault*, 6 Idaho 178, 54 P. 617 (1898).

This section imposes on the legislature duty of providing method or means by which compensation for supplying water to any city or town is to be fixed, and until the legislature provides such a method, the contract rates for such supply will be enforced. *Jack v. Village of Grangeville*, 9 Idaho 291, 74 P. 969 (1903).

Until such rates are fixed in pursuance of law, the corporation furnishing the water, and the consumer receiving it, are left free to make such contracts as they may see fit to make, and their agreements will be sustained in the courts. *Jackson v. Indian Creek Reservoir Ditch & Irrigation Co.*, 16 Idaho 430, 101 P. 814 (1909).

After the adoption of Const., Art. 15, §§ 1, 2, and 6, it was in excess of and beyond the power of any city, town or village within this state, by ordinance, contract, or otherwise, to bind itself or the inhabitants thereof to pay fixed rates or charges for water sold, rented or distributed for any longer or greater period of time than that intervening between time of the passage of such ordinance and making of such contract and the subsequent fixing of rates under the enactment by the legislature of a statute prescribing the manner and method in which reasonable maximum rates might be established. *City of Pocatello v.*

Murray, 21 Idaho 180, 120 P. 812, aff'd, 226 U.S. 318, 33 S. Ct. 107, 57 L. Ed. 239 (1912).

Ordinance No. 86 of the city of Pocatello adopted on June 1, 1901, which prescribed a schedule of rates which the Pocatello Water Co. might charge for supplying water to the inhabitants of the city of Pocatello for a fixed period of time and which also provided method and manner of thereafter appointing a commission to establish rates at expiration of such period, must be read and construed in the light of the provisions of Const., Art. 15, §§ 1, 2 and 6, and was subject to operation of the Constitution and power of the legislature to prescribe manner in which reasonable maximum rates might thereafter be established to be charged for use of water sold, rented or distributed for any useful or beneficial purpose. *City of Pocatello v. Murray*, 21 Idaho 180, 120 P. 812, aff'd, 226 U.S. 318, 33 S. Ct. 107, 57 L. Ed. 239 (1912).

Method of Fixing Rates.

Decision of Supreme Court of state construing Constitution and statutes as to method of fixing water rates will not be disturbed by Supreme Court of United States. *Murray v. Pocatello*, 226 U.S. 318, 33 S. Ct. 107, 57 L. Ed. 239 (1912).

Reasonable Rates Guaranteed.

This section guarantees to everyone engaged in supplying water under a sale or rental that the rates to be established shall always be "reasonable maximum rates," and that, as a consequence thereof, the property of one so engaged shall not be taken without due process of law. *City of Pocatello v. Murray*, 21 Idaho 180, 120 P. 812, aff'd, 226 U.S. 318, 33 S. Ct. 107, 57 L. Ed. 239 (1912).

Requirement of Free Water.

A statutory provision, requiring water companies to furnish cities with free water for fire purposes, is not repugnant to this section. *City of Boise v. Artesian Hot & Cold Water Co.*, 4 Idaho 351, 39 P. 562 (1895).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1181, 1185.

§ 7. State Water Resource Agency. — There shall be constituted a Water Resource Agency, composed as the Legislature may now or hereafter prescribe, which shall have power to construct and operate water projects; to issue bonds, without state obligation, to be repaid from revenues of projects; to generate and wholesale hydroelectric power at the site of production; to appropriate public waters as trustee for Agency projects; to

acquire, transfer and encumber title to real property for water projects and to have control and administrative authority over state lands required for water projects; all under such laws as may be prescribed by the Legislature. Additionally, the State Water Resource Agency shall have power to formulate and implement a state water plan for optimum development of water resources in the public interest. The Legislature of the State of Idaho shall have the authority to amend or reject the state water plan in a manner provided by law. Thereafter any change in the state water plan shall be submitted to the Legislature of the State of Idaho upon the first day of a regular session following the change and the change shall become effective unless amended or rejected by law within sixty days of its admission to the Legislature.

Compiler's notes. This section was proposed by S.J.R. No. 1 (1964, 1st E.S.), S.L. 1965, p. 22, and ratified at the general election, November 3, 1964 to read as follows:

“§ 7. State water resource agency. There shall be constituted a Water Resource Agency, composed as the Legislature may now or hereafter prescribe, which shall have power to formulate and implement a state water plan for optimum development of water resources in the public interest; to construct and operate water projects; to issue bonds, without state obligation, to be repaid from revenues of projects; to generate and wholesale hydroelectric power at the site of production; to appropriate public waters as trustee for Agency projects; to acquire, transfer and encumber title to real property for water projects and to have control and administrative authority over state lands required for water projects; all under such laws as may be prescribed by the Legislature.”

It was amended as proposed by S.J.R. No. 117 (S.L. 1984, p. 689) and ratified at the general election of November 6, 1984 to read as it now appears.

Section 4 of S.L. 1965, ch. 320 and section 23 of S.L. 1974, ch. 20 compiled as § 42-1734 constitute the Idaho water resource board as the water resource agency vesting it with the rights, powers, duties and privileges conferred by this section of the Constitution.

Sec. to sec. ref. This section is referred to in §§ 42-1734 and 42-1775.

Cited in: Parker v. Wallentine, 103 Idaho 506, 650 P.2d 648 (1982).

ANALYSIS

Creation of agency.
Ground water act.
Issuance of bonds.
Laws prescribed by legislature.
Limitation of powers.
State water plan.

Creation of Agency.

The submission and approval of the amendment which established a state water re-

source agency and the powers of the agency within this section of the Constitution did not violate the requirements of art. 20, § 2 which requires separate propositions be voted upon individually since the propositions are dependent and closely related. Idaho Water Resource Bd. v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976).

Ground Water Act.

The Ground Water Act is consistent with the constitutionally enunciated policy of promoting optimum development of water resources in the public interest. Baker v. Ore-Ida Foods, Inc., 95 Idaho 575, 513 P.2d 627 (1973).

Issuance of Bonds.

The limitations and requirements placed on the debts and liabilities of the state and its agencies under art. 8, § 1 do not apply to revenue bonds issued under this section because the bonds will not create an impermissible debt or liability. Idaho Water Resource Bd. v. Kramer, 97 Idaho 535, 548 P.2d 35 (1976).

Laws Prescribed by Legislature.

Section 42-1736 requiring legislative approval of the state water plan is unconstitutional since it purports to authorize the legislature to perform functions constitutionally assigned to the water resources board, but even if § 42-1736 had authorized legislative action which was not in conflict with this section, it could still have no legal effect because it provides for legislative action on the state water plan by means of a concurrent resolution. To the extent that this section authorizes the legislature to influence the operation of the water resources board, it does so only as to “such laws as may be prescribed by the legislature”; legislative action by resolution is not a “law” in that context. Idaho Power Co. v. State, 104 Idaho 570, 661 P.2d 736 (1983).

The final phrase “all under such laws as may be prescribed by the legislature” in this

section applies primarily to procedural matters, and not to the specific, substantive grants of power enumerated in that section since the framers of the constitutional amendment, and the electorate through its ratifying vote, could not have intended that the amendment abrogate its own explicit grants of power; the more likely intention would be that the legislature have a certain degree of control over the formation and operation of the agency; the phrase in question is an expression of the legislature's authority to enact such laws as may be necessary to the carrying out of the purposes of the constitutional provision. *Idaho Power Co. v. State*, 104 Idaho 570, 661 P.2d 736 (1983).

Limitation of Powers.

An administrative agency like the Department of Water Resources has only such powers as the statute or ordinance confers. *Beker Indus., Inc. v. Georgetown Irrigation Dist.*, 101 Idaho 187, 610 P.2d 546 (1980).

State Water Plan.

There is no basis for drawing a distinction between the word "formulate," as used in this section and the word "adopt" as both are used interchangeably; accordingly, interpretation that use of words "formulation and implementation" in such provision impliedly authorized the legislature to either amend and adopt, or reject, a water plan formulated by the water resources board was incorrect. *Idaho Power Co. v. State*, 104 Idaho 570, 661 P.2d 736 (1983).

The Idaho water resources board has the exclusive authority to formulate the state water plan; the board is the state "water resource agency" contemplated by this section and in that constitutional provision the agency is specifically empowered to "formulate and implement a state water plan." *Idaho Power Co. v. State*, 104 Idaho 570, 661 P.2d 736 (1983).

Section 42-1736A (repealed) was unconstitutional to the extent that it would enable the legislature to supplant the board's power to set out an official statement of Idaho water

policy in the "State Water Plan." *Idaho Power Co. v. State*, 104 Idaho 570, 661 P.2d 736 (1983).

The provision, in § 42-1736B(2), requiring legislative approval of water plans unconstitutionally infringes on the water resources board's authority to determine the state water plan, and is therefore invalid. *Idaho Power Co. v. State*, 104 Idaho 570, 661 P.2d 736 (1983).

Opinions of Attorney General. It is statutorily authorized and constitutionally permissible for the state Water Resource Board to issue revenue bonds to a local water project sponsor to construct a hydroelectric power project which serves no other water development, usage, or conservation purpose. OAG 85-2.

The Idaho Water Resource Board has authority to issue revenue bonds, either separately or jointly with the other compacting states, to fund Idaho's share of a joint water project on the Bear River within Idaho, Utah, or Wyoming. However, the Idaho Legislature must authorize construction of the project before the Idaho Water Resource Board may issue the revenue bonds. OAG 89-1.

The Idaho Water Resource Board could issue revenue bonds to fund Idaho's share of a joint water project constructed by another entity without legislative approval. OAG 89-1.

Section 7, art. 15, of the Idaho Constitution did not prohibit legislative action on the Payette River Plan during the 1991 legislative session; while § 42-1734B(6) provides for one method of legislative review of such river plans, it does not preclude the legislature from enacting a specific law approving, amending or rejecting the Comprehensive State Plan: Payette River Reaches. OAG 91-5.

The term "change" in this section, of the Idaho Constitution only refers to deletions or revisions to the existing State Water Plan and since the Comprehensive State Plan by the Idaho Water Resource Board was an addition of a new component to the existing State Water Plan, it was not a change under this section of the Idaho Constitution. OAG 91-5.

Article XVI

LIVESTOCK

SECTION.

1. Laws to protect livestock.

§ 1. Laws to protect livestock. — The legislature shall pass all necessary laws to provide for the protection of livestock against the introduction or spread of pleuro pneumonia, glanders, splenic or texas fever, and other infectious or contagious diseases. The legislature may also establish a system of quarantine or inspection and such other regulations as

may be necessary for the protection of stock owners and most conducive to the stock interests within this state.

Cross ref. Livestock laws, title 25.

Comp. provisions: Wyo. Art. 19, § 1.

Cited in: Noble v. Bragaw, 12 Idaho 265, 85 P. 903 (1906).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1396, 1543.

Article XVII

STATE BOUNDARIES

SECTION.

1. Name and boundaries of state.

§ 1. Name and boundaries of state. — The name of this state is Idaho, and its boundaries are as follows: Beginning at a point in the middle channel of the Snake river where the northern boundary of Oregon intersects the same; then follow down the channel of Snake river to a point opposite the mouth of the Kooskooskia or Clearwater river; thence due north to the forty-ninth parallel of latitude; thence east along that parallel to the thirty-ninth degree of longitude west of Washington; thence south along that degree of longitude to the crest of the Bitter Root mountains; thence southward along the crest of the Bitter Root mountains till its intersection with the Rocky mountains; thence southward along the crest of the Rocky mountains to the thirty-fourth degree of longitude west of Washington; thence south along that degree of longitude to the forty-second degree of north latitude; thence west along that parallel to the eastern boundary of the state of Oregon; thence north along that boundary to the place of beginning.

Cross ref. Section 2 of Admission Bill.

For a brief history of the changes in the boundaries of the state, see Compiler's note following section 1 of the Organic Act of the Territory of Idaho, elsewhere in this volume.

Opinions of Attorney General. A boundary defined as the "live thalweg," or middle of the main navigable channel, may vary from time to time, depending upon the course of the river as its bed and channel change due to the gradual processes of erosion and accretion; therefore, the actual physical boundary of the state of Idaho for a particular reach of the Snake River must be determined on a case-by-case basis after consideration of available evidence. OAG 88-7.

When the boundary of the state of Idaho is

defined in part by the Snake River, that boundary is located in the middle of the main navigable channel of the river; Idaho's full civil and criminal jurisdiction extends to all activities occurring on the Idaho side of the main navigable channel unless the Idaho legislature has specifically provided otherwise. OAG 88-7.

Collateral References. This article was not considered by the convention as a separate article but seems to have been reported as part of article 18 under the title of "Names, Boundaries, and County Organization." See Vol. II, Constitutional Convention, Proceedings and Debates, p. 1775 et seq., and index thereto, p. 2119.

Article XVIII

COUNTY ORGANIZATION

SECTION.

1. Existing counties recognized.
2. Removal of county seats.
3. Division of counties.

SECTION.

4. New counties — Size and valuation.
- 4A. Consolidation of counties.
5. System of county government.

SECTION.

6. County officers.
7. County officers — Salaries.
8. County officers — How paid.
9. County officers — Liability for fees.

SECTION.

10. Board of county commissioners.
11. Duties of officers.
12. Optional forms of county government.

§ 1. Existing counties recognized. — The several counties of the territory of Idaho, as they now exist, are hereby recognized as legal subdivisions of this state.

Comp. provisions: **Utah.** Art. 11, §§ 2-4.
Wyo. Art. 12, § 1 et seq.

Cited in: *People ex rel. Lincoln County v. George*, 3 Idaho 72, 26 P. 983 (1891); *People ex rel. Att'y Gen. v. Alturas County*, 6 Idaho 418, 55 P. 1067, 44 L.R.A. 122 (1899); *Roach v. Gooding*, 11 Idaho 244, 81 P. 642 (1905); *Prothero v. Board of Comm'rs*, 22 Idaho 598, 127 P. 175 (1912).

ANALYSIS

Abolition of counties.
Ad valorem tax exemption.
Effect of highway district organization.
Immunities.
Legal subdivisions.
Levying and collecting of taxes.

Abolition of Counties.

The legislature can not abolish an existing county. *People ex rel. Lincoln County v. George*, 3 Idaho 72, 26 P. 983 (1891).

The legislature can not abolish an existing county and create two new counties from the territory formerly embraced within the old county with different county seats and new sets of officers. *McDonald v. Doust*, 11 Idaho 14, 81 P. 60, 69 L.R.A. 220 (1905).

Ad Valorem Tax Exemption.

This section was not violated by ch. 116, 1967 Session Laws, as amended by ch. 377, 1967 Session Laws (§§ 63-105R, 63-105Y, 63-105Z, 63-3638); exempting agricultural crops from ad valorem taxation; defining business inventory; exempting same from ad valorem taxation by increasing exemptions in steps over a four-year period from partial to whole exemptions; providing for transfer of funds from the sales tax fund to all counties in the state for distribution to all taxing districts in

the counties, to be applied in the same manner and in the same proportions as revenues from ad valorem taxation; and providing formulas for determining percentages of sales tax fund to go to all counties and taxing districts in counties. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

Effect of Highway District Organization.

The political subdivision of the state recognized by our Constitution as a county is none the less a county because of the organization of a highway district therein. *Reinhart v. Canyon County*, 22 Idaho 348, 125 P. 791 (1912).

Immunities.

Counties are political subdivisions of the state of Idaho and therefore fall within the immunities provided the state's subdivisions. *Sims v. State*, 94 Idaho 801, 498 P.2d 1274, cert. denied, 409 U.S. 1037, 93 S. Ct. 518, 34 L. Ed. 2d 488 (1972).

Legal Subdivisions.

Counties are legal subdivisions of state. *Strickfaden v. Greencreek Hwy. Dist.*, 42 Idaho 738, 248 P. 456, 49 A.L.R. 1057 (1926).

Levying and Collecting of Taxes.

There is no conflict between this constitutional provision and legislation creating public health districts since under the legislation the levying and collecting of taxes is performed at and by the county level of government properly acting in its executive capacity, and the counties' taxing function is not intruded upon. *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972).

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1775, 1897.

§ 2. Removal of county seats. — No county seat shall be removed unless upon petition of a majority of the qualified electors of the county, and unless two-thirds (⅔) of the qualified electors of the county, voting on the proposition at a general election, shall vote in favor of such removal. A proposition of removal of the county seat shall not be submitted in the same county more than once in six (6) years, except as provided by existing laws. No person shall vote at any county seat election who has not resided in the county six (6) months, and in the precinct ninety (90) days.

Cited in: *People ex rel. Lincoln County v. George*, 3 Idaho 72, 26 P. 983 (1891); *Green v. State Bd. of Canvassers*, 5 Idaho 130, 47 P. 259, 95 Am. St. R. 169 (1896); *McDonald v. Doust*, 11 Idaho 14, 81 P. 60, 69 L.R.A. 220 (1905); *Lippincott v. Carpenter*, 22 Idaho 675, 127 P. 557 (1912).

ANALYSIS

New counties.
Signers of petition.
Temporary location.

New Counties.

This section does not apply to the location of a permanent county seat upon the organization of a new county, but does apply to the removal of a county seat. *Leach v. Nez Perce*, 24 Idaho 322, 133 P. 926 (1913).

Signers of Petition.

Framers of the Constitution did not intend to prescribe a rule by which a majority of the qualified electors, contemplated by this sec-

tion as signers of a petition for removal of a county seat, should be ascertained, but left that rule to be established by the legislature, as was done in S.L. 1899, p. 41, § 6, providing for county seat elections, and by which the qualified electors who sign the petition need not be registered voters. *Wilson v. Bartlett*, 7 Idaho 271, 62 P. 416 (1900).

Temporary Location.

Limitations imposed by this section on the removal of a county seat apply only to removal of a county seat which has been permanently fixed, and do not prohibit legislature from temporarily locating the seat of a new county, and further providing, in the act creating the county, for an election on the question of permanent location of county seat. *Doan v. Board of County Comm'rs*, 3 Idaho 38, 26 P. 167 (1891).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1775, 1800.

§ 3. Division of counties. — No county shall be divided unless a majority of the qualified electors of the territory proposed to be cut off, voting on the proposition at a general election, shall vote in favor of such division: provided, that this section shall not apply to the creation of new counties. No person shall vote at such election who has not been ninety (90) days a resident of the territory proposed to be annexed. When any part of a county is stricken off and attached to another county, the part stricken off shall be held to pay its ratable proportion of all then existing liabilities of the county from which it is taken.

Cross ref. Changing boundaries of counties, § 31-212.

Division of counties, transfer of records, §§ 31-301 — 31-303.

Cited in: *Sabin v. Curtis*, 3 Idaho 662, 32 P. 1130 (1893); *McDonald v. Doust*, 11 Idaho 14, 81 P. 60, 69 L.R.A. 220 (1905); *Blake v. Jacks*, 18 Idaho 70, 108 P. 534, 27 L.R.A. (n.s.) 1147, 138 Am. St. R. 177 (1910); *Leach v. Nez Perce*, 24 Idaho 322, 133 P. 926 (1913).

Sec. to sec. ref. This section is referred to in § 34-401.

ANALYSIS

Creation of new counties.
Division of territory.
Liability of detached territory.
Voluntary division.

Creation of New Counties.

This section and the following one expressly authorize the creation of new counties, and, in the creation of such a county, the legislature may make any provision necessary to the complete organization of that county not specifically prohibited by the Constitution, and

may provide for the apportionment of the debt of the original county and for transcribing the records. *Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894), overruled on other grounds, *Veatch v. City of Moscow*, 18 Idaho 313, 109 P. 722 (1910).

Division of Territory.

This section prohibits cutting off territory from one county and annexing it to another without submitting the proposition to popular vote, under the guise of an act purporting to create two new counties from territory previously belonging to two existing counties, and so changing boundary line between them as to give one of the counties a strip of territory which previously belonged to the other. The act of March 3, 1891, purporting to create and organize the counties of Alta and Lincoln, was held on this ground to be unconstitutional. *People ex rel. Lincoln County v. George*, 3 Idaho 72, 26 P. 983 (1891).

Liability of Detached Territory.

This section continues the liability of territory, detached from one county and annexed to another, for its ratable proportion of the

debts of the mother county, and prohibits the legislature from imposing such indebtedness on the county to which the detached territory is annexed. *Shoshone County v. Proffit*, 11 Idaho 763, 84 P. 712 (1906).

Voluntary Division.

Since this provision is limited to the voluntary division of a county, it does not govern a controversy as to whether the whole of a district, to which was attached by statute a

portion of a district divided by statute, should be liable for the proportion of the indebtedness of the disorganized district assessed against such attached portion. *Oliver v. Wendell Hwy. Dist.*, 38 Idaho 635, 224 P. 81 (1924).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1780, 1801, 1874.

§ 4. New counties — Size and valuation. — No new counties shall be established which shall reduce any county to an area of less than four hundred (400) square miles, nor the valuation of its taxable property to less than one million dollars (\$1,000,000); nor shall any new county be formed which shall have an area of less than four hundred (400) square miles, and taxable property of less than one million dollars (\$1,000,000), as shown by the last previous assessment.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 4. No new county shall be established which shall reduce any county to an area of less than four hundred square miles, nor shall a new county be formed containing an area of less than four hundred square miles."

It was amended, as proposed by S.L. 1897, p. 166, H.J.R. No. 8, and ratified at the general election in November, 1898, to read as it now appears.

Cited in: *People ex rel. Lincoln County v. George*, 3 Idaho 72, 26 P. 983 (1891); *Sabin v. Curtis*, 3 Idaho 662, 32 P. 1130 (1893); *Bannock County v. C. Bunting & Co.*, 4 Idaho 156, 37 P. 277 (1894).

ANALYSIS

Constitutionality of amendment.

Reorganization of county.

Sufficiency of legislative act.

Constitutionality of Amendment.

Quaere suggested as to constitutionality of

the amendment of 1898. *Holmberg v. Jones*, 7 Idaho 752, 65 P. 563 (1901).

Reorganization of County.

The authority granted by this section to create new counties does not authorize the reorganization of an old county under a new name. *McDonald v. Doust*, 11 Idaho 14, 81 P. 60, 69 L.R.A. 220 (1905).

Sufficiency of Legislative Act.

A county can not be created by implication and intendment merely, and an act apparently passed for the purpose of creating a county is invalid for that purpose when it fails to declare in express language the creation of such proposed county. *Holmberg v. Jones*, 7 Idaho 752, 65 P. 563 (1905).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1803.

§ 4A. Consolidation of counties. — Counties of the state of Idaho as they now exist, or may hereafter be created or exist, may be consolidated in such manner as shall be prescribed by law; provided, no county may be consolidated with another county, except upon approval of a two-thirds ($\frac{2}{3}$) majority vote in each county, of the qualified electors thereof voting upon the question, and the limitations and provisions of sections 2, 3 and 4 of Article XVIII of the Constitution of the state of Idaho shall have no application to the question of consolidating counties.

Compiler's notes. This section did not appear in the Constitution, as originally

adopted. It was added, as proposed by S.L. 1931, p. 460, S.J.R. No. 3, and ratified at the

general election in November, 1932.

Cross ref. Consolidation of counties, §§ 31-401 — 31-416.

Creation of Public Health Districts.

Creation of public health districts does not

constitute a consolidation of counties in violation of this section because all of the county governments within a public health district remain fully independent and distinct entities. *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972).

§ 5. System of county government. — The legislature shall establish, subject to the provisions of this article, a system of county governments which shall be uniform throughout the state; and by general laws shall provide for township or precinct organizations.

Cited in: *McDonald v. Doust*, 11 Idaho 14, 81 P. 60, 69 L.R.A. 220 (1905); *Jones v. Power County*, 27 Idaho 656, 150 P. 35 (1915); *Prichard v. McBride*, 28 Idaho 346, 154 P. 624 (1916); *Givens v. Carlson*, 29 Idaho 133, 157 P. 1120 (1916); *Hansen v. White*, 114 Idaho 907, 762 P.2d 820 (1988).

ANALYSIS

Ad valorem tax exemption.

Levyng and collecting of taxes.

Ad Valorem Tax Exemption.

This section was not violated by ch. 116, 1967 Session Laws, as amended by ch. 377, 1967 Session Laws (§§ 63-105R, 63-105Y, 63-105Z, 63-3638); exempting agricultural crops from ad valorem taxation; defining business inventory; exempting same from ad valorem taxation by increasing exemptions in steps over a four-year period from partial to whole exemptions; providing for transfer of funds from the sales tax fund to all counties in the

state for distribution to all taxing districts in the counties, to be applied in the same manner and in the same proportions as revenues from ad valorem taxation; and providing formulas for determining percentages of sales tax fund to go to all counties and taxing districts in counties. *Leonardson v. Moon*, 92 Idaho 796, 451 P.2d 542 (1969).

Levyng and Collecting of Taxes.

There is no conflict between this constitutional provision and legislation creating public health districts since under the legislation the levyng and collecting of taxes is performed at and by the county level of government properly acting in its executive capacity, and the counties' taxing function is not intruded upon. *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972).

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. II, p. 1803.

§ 6. County officers. — The legislature by general and uniform laws shall, commencing with the general election in 1986, provide for the election biennially, in each of the several counties of the state, of county commissioners and for the election of a sheriff, a county assessor, a county coroner and a county treasurer, who is ex-officio public administrator, every four years in each of the several counties of the state. All taxes shall be collected by the officer or officers designated by law. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, county assessor, county treasurer, and ex-officio tax collector, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their office may

require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 6. The legislature, by general and uniform laws, shall provide for the election biennially, in each of the several counties of the state, of county commissioners, a sheriff, county treasurer, who is ex officio public administrator, probate judge, who is ex officio county superintendent of public instruction, county assessor, who is ex officio tax collector, a coroner, and a surveyor. The clerk of the district court shall be ex officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws, shall provide for the election of such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, auditor and recorder, and clerk of the district court, shall be empowered by the county commissioners to appoint such deputies and clerical assistance as the business of their offices may require; said deputies and clerical assistance to receive such compensation as may be fixed by the county commissioners. No sheriff or county assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected."

The section was amended, as proposed by S.L. 1893, p. 224, and ratified at the general election in November, 1894, to read as follows:

"§ 6. The Legislature by general and uniform laws, shall provide for the election biennially in each of the several counties of the State, of County Commissioners, a Sheriff, a County Treasurer, who is ex-officio Public Administrator; a Probate Judge, a County Superintendent of Public Instruction, a County Assessor, who is ex-officio Tax Collector; a Coroner and a Surveyor. The Clerk of the District Court shall be ex-officio Auditor and Recorder. No other county offices shall be established, but the Legislature by general and uniform laws, shall provide for the election of such Township, Precinct and Municipal officers as public convenience may require, and shall prescribe their duties and fix their terms of office. The Legislature shall provide for the strict accountability of County, Township, Precinct and Municipal officers for all fees which may be collected by them, and for all public and municipal moneys, which

may be paid to them, or officially come into their possession. The County Commissioners, may employ counsel when necessary. The Sheriff, Auditor and Recorder and Clerk of the District Court shall be empowered by the County Commissioners to appoint such Deputies and clerical assistance as the business of their offices may require; said Deputies and clerical assistants to receive such compensation as may be fixed by the County Commissioners. No Sheriff or County Assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected. The salary and qualifications of the County School Superintendent shall be fixed by law."

The section was amended for a second time, as proposed by S.L. 1895, p. 237, H.J.R. No. 10, and ratified at the general election in November, 1896, to read as follows:

"§ 6. The Legislature by general and uniform laws shall provide for the election biennially in each of the several Counties of the State, of County Commissioners, a Sheriff, a County Treasurer, who is Ex-Officio Public Administrator, a Probate Judge, a County Superintendent of Public Instruction, a County Assessor who is ex-officio tax collector, a Coroner, and a Surveyor.

"The Clerk of the District Court shall be Ex-Officio Auditor and Recorder. No other County offices shall be established, but the Legislature by general and uniform laws, shall provide for such township, precinct, and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The Legislature shall provide for the strict accountability of County, Township, Precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The County Commissioners may employ counsel when necessary.

"The Sheriff, Auditor and Recorder, and Clerk of the District Court shall be empowered by the County Commissioners to appoint such deputies and clerical assistance as the business of their offices may require, said deputies and clerical assistants to receive such compensation as may be fixed by the County Commissioners. No Sheriff or County Assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected. The salary and qualifications of the County Superintendent shall be fixed by law."

The section was amended a third time, as proposed by S.L. 1907, p. 585, H.J.R. No. 10, and ratified at the general election in November, 1908, to read as follows:

"§ 6. The Legislature, by general and uni-

form laws, shall provide for the election biennially in each of the several counties of the State, of county commissioners, a sheriff, a county treasurer who is ex-officio public administrator, a probate judge, a county superintendent of public instruction, a county assessor who is ex-officio tax collector, a coroner and surveyor. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the Legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public conveniences may require, and shall prescribe their duties, and fix their terms of office. The Legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, assessor and tax collector, auditor and recorder, and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistance as the business of their office may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners. No sheriff or county assessor shall be qualified to hold the term of office immediately succeeding the term for which he was elected. The salary and qualifications of the county superintendent shall be fixed by law."

The section was amended for a fourth time, as proposed by S.L. 1909, p. 439, S.J.R. No. 6, and ratified at the general election in November, 1910, to read as follows:

"§ 6. The Legislature, by general and uniform laws, shall provide for the election biennially in each of the several counties of the State, of county commissioners, a sheriff, a county treasurer who is ex-officio public administrator, a probate judge, a county superintendent of public instruction, a county assessor who is ex-officio tax collector, a coroner and surveyor. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the Legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public conveniences may require, and shall prescribe their duties, and fix their terms of office. The Legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, county assessor and ex-officio tax collector, auditor and recorder, and clerk of the

district court shall be empowered by the county commissioners to appoint such deputies and clerical assistance as the business of their office may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners. The salary and qualifications of the county superintendent shall be fixed by law."

The section was amended for a fifth time, as proposed by S.L. 1912 (E.S.), p. 53, S.J.R. No. 1, and ratified at the general election in November, 1912, to read as follows:

"§ 6. **County officers.** — The legislature by general and uniform laws shall provide for the election biennially in each of the several counties of the state, of county commissioners, a sheriff, a county treasurer, who is ex-officio public administrator, and also ex-officio tax collector, a probate judge, a county superintendent of public instruction, a county assessor, a coroner and surveyor. The clerk of the district court shall be ex-officio auditor and recorder. No other county officers shall be established, but the legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, county assessor, county treasurer and ex-officio tax collector, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their offices may require; said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners. The salary and qualifications of the county superintendent shall be fixed by law."

The section was amended for a sixth time, as proposed by S.L. 1927, p. 590, H.J.R. No. 11, and ratified at the general election in November, 1928, to read as follows:

"§ 6. **County officers.** — The legislature by general and uniform laws shall provide for the election biennially in each of the several counties of the state, of county commissioners, a sheriff, a county treasurer, who is ex officio public administrator, a probate judge, a county superintendent of public instruction, a county assessor, a coroner and surveyor. All taxes shall be collected by the officer or officers designated by law. The clerk of the district court shall be ex officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for such township, precinct

and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, county assessor, county treasurer, and ex officio tax collector, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistance as the business of their offices may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners. The salary and qualifications of the county superintendent shall be fixed by law."

As amended by S.L. 1947, p. 906, S.J.R. No. 906 and ratified at the general election November, 1948, this section provided as follows:

"§ 6. The legislature by general and uniform laws shall, commencing with the general election in 1950, provide for the election biennially in each of the several counties of the state, of county commissioners a sheriff, a county treasurer, who is ex officio public administrator, a probate judge, a county assessor, a coroner and surveyor. All taxes shall be collected by the officer or officers designated by law. The clerk of the district court shall be ex officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, county assessor, county treasurer, and ex officio tax collector, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their offices may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners."

This section was amended, as proposed by S.L. 1959, p. 661, H.J.R. No. 9 and ratified at the general election in November, 1960, to read as follows:

"§ 6. The legislature by general and uniform laws shall, commencing with the general election in 1962, provide for the election biennially, in each of the several counties of the

state, of county commissioners, a sheriff, a county treasurer, who is ex officio public administrator, a probate judge, a county assessor and a coroner. All taxes shall be collected by the officer or officers designated by law. The clerk of the district court shall be ex officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, county assessor, county treasurer, and ex officio tax collector, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their office may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners."

As amended by S.L. 1961, p. 1077, H.J.R. No. 10, § 4, and ratified at the general election November 6, 1962, this section provided as follows:

"§ 6. **County officers.** — The legislature by general and uniform laws shall, commencing with the general election in 1962 provide for the election biennially, in each of the several counties of the state, of county commissioners, a sheriff, a county treasurer, who is ex-officio public administrator, a probate judge, until otherwise provided by the legislature, a county assessor and a coroner. A probate or other county judge may be a county officer if provided for by law. All taxes shall be collected by the officer or officers designated by law. The clerk of the district court shall be ex-officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, county assessor, county treasurer, and ex-officio tax collector, auditor and recorder and clerk of the district court shall be empow-

ered by the county commissioners to appoint such deputies and clerical assistants as the business of their office may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners."

The section was amended as proposed by S.L. 1963, p. 1147, S.J.R. No. 6 and ratified at the general election November 3, 1964, to read as follows:

"§ 6. **County officers.** — The legislature by general and uniform laws shall, commencing with the general election in 1964, provide for the election biennially, in each of the several counties of the state, of county commissioners, a county treasurer, who is ex officio public administrator, a probate judge, until otherwise provided by the legislature, a county assessor and a coroner and for the election of a sheriff every four years in each of the several counties of the state. A probate or other county judge may be a county officer if provided for by law. All taxes shall be collected by the officer or officers designated by law. The clerk of the district court shall be ex officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public convenience may require and shall prescribe their duties, and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, county assessor, county treasurer, and ex officio tax collector, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their office may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners."

This section was amended by two amendments (H.J.R. No. 3 of 1969 and S.J.R. No. 121 of 1970) which were approved by the voters at the general election on November 3, 1970. The full text of these respective resolutions is set out below.

H.J.R. No. 3 of 1969 read: "§ 6. **County officers.** — The legislature by general and uniform laws shall, commencing with the general election in 1970, provide for the election biennially, in each of the several counties of the state, of county commissioners, a county treasurer, who is ex officio public administrator, a probate judge, until otherwise provided by the legislature, and a coroner and for the election of a sheriff and a county

assessor every four years in each of the several counties of the state. A probate or other county judge may be a county officer if provided for by law. The clerk of the district court shall be ex officio auditor and recorder. No other county offices shall be established, but the legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The legislature shall provide for the strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, county assessor, county treasurer, and ex officio tax collector, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their office may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners."

S.J.R. No. 121 of 1970 read: "**County officers.** — The legislature by general and uniform laws shall, commencing with the general election in 1970, provide for the election biennially, in each of the several counties of the state, of county commissioners, county assessor and a coroner and for the election of a sheriff and, a county treasurer, who is ex officio public administrator, every four years in each of the several counties of the state. All taxes shall be collected by the officer or officers designated by law. The clerk of the district court shall be ex officio auditor and recorder. No other county officers [offices] shall be established, but the legislature by general and uniform laws shall provide for such township, precinct and municipal officers as public convenience may require, and shall prescribe their duties, and fix their terms of office. The legislature shall provide strict accountability of county, township, precinct and municipal officers for all fees which may be collected by them, and for all public and municipal moneys, which may be paid to them, or officially come into their possession. The county commissioners may employ counsel when necessary. The sheriff, county assessor, county treasurer, and ex officio tax collector, auditor and recorder and clerk of the district court shall be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their office may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners."

This section was amended as proposed by S.L. 1986, p. 866, S.J.R. No. 102, and ratified

at the general election November 4, 1986, to read as it now appears.

An amendment to this section, proposed 1907, p. 592, H.J.R. 3, and voted upon Nov. 3, 1908, 1913, p. 668, by which the office of probate judge was to be abolished, was declared not to be part of the Constitution on account of noncompliance with the requirements for amending. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908).

Cross ref. Assessor, § 31-2501.

Board of county commissioners, §§ 31-701 — 31-717.

Coroner, §§ 31-2801 — 31-2807.

County auditor, §§ 31-2301 — 31-2309.

County officers in general, §§ 31-2001 — 31-2017.

County superintendent of public instruction, §§ 33-201, 33-202.

County surveyor, §§ 31-2705, 31-2707 — 31-2709.

County treasurer, §§ 31-2101 — 31-2125.

Powers and duties of county commissioners, §§ 31-801 — 31-857.

Prosecuting attorney, §§ 31-2601 — 31-2614.

Records, §§ 31-2401 — 31-2419.

Sheriff, §§ 31-2201 — 31-2226.

Cited in: *United States v. Andersen*, 169 F. 201 (D. Idaho 1909) *Dexter Horton Trust & Sav. Bank v. Clearwater County*, 248 F. 401 (9th Cir. 1918); *Hillard v. Shoshone County*, 3 Idaho 103, 27 P. 678 (1891); *Cunningham v. George*, 3 Idaho 456, 31 P. 809 (1892); *Sabin v. Curtis*, 3 Idaho 662, 32 P. 1130 (1893); *Campbell v. Board of Comm'rs*, 4 Idaho 181, 37 P. 329 (1894); *Ada County v. Gess*, 4 Idaho 611, 43 P. 71 (1895); *State ex rel. Griffith v. Vineyard*, 9 Idaho 134, 72 P. 824 (1903); *In re Sly*, 9 Idaho 779, 76 P. 766 (1904); *Feltham v. Board of County Comm'rs*, 10 Idaho 182, 77 P. 332 (1904); *In re Rice*, 12 Idaho 305, 85 P. 1109 (1906); *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909); *Lansdon v. Washington County*, 16 Idaho 618, 102 P. 344 (1909); *Bradfield v. Avery*, 16 Idaho 769, 102 P. 687, 23 L.R.A. (n.s.) 1228 (1909); *Fenton v. Board of Comm'rs*, 20 Idaho 392, 119 P. 41 (1911); *In re Gemmill*, 20 Idaho 732, 119 P. 298, 41 L.R.A. (n.s.) 711, 1913A Ann. Cas. 76 (1911); *People ex rel. Rees v. Kadletz*, 30 Idaho 698, 167 P. 1161 (1917); *State v. Wharfield*, 41 Idaho 14, 236 P. 862 (1925); *State ex rel. Rich v. Larson*, 84 Idaho 529, 374 P.2d 484 (1962); *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967); *State v. Whelan*, 103 Idaho 651, 651 P.2d 916 (1982); *LaBrosse v. Board of Comm'rs*, 105 Idaho 730, 672 P.2d 1060 (1983); *Schoonover v. Bonner County*, 113 Idaho 916, 750 P.2d 95 (1988).

ANALYSIS

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Appointment of Deputies.

The question of appointment of deputies is submitted entirely to the discretion of the county commissioners, and the sheriff can not appoint a deputy to assist him unless he is empowered so to do by the commissioners. *Campbell v. Board of Comm'rs*, 5 Idaho 53, 46 P. 1022 (1896).

Where an officer is absent from his office by reason of illness or private business, the expense of employing a deputy to transact the business of the office is not a county charge. *Woodward v. Board of Comm'rs*, 5 Idaho 524, 51 P. 143 (1897).

Before the county commissioners are authorized to empower the sheriff to appoint a deputy, they must find that the business of the office requires the assistance of a deputy so that a necessity exists for such appointment. *Taylor v. Canyon County*, 6 Idaho 466, 56 P. 168 (1899).

No other county officers than those mentioned in this section are entitled to deputies or clerks at the expense of the county. *Freemont County v. Brandon*, 6 Idaho 482, 56 P. 264 (1899), overruled on other grounds, *Bannock County v. Bell*, 8 Idaho 1, 65 P. 710 (1901).

The authorization of an appointment of a deputy clerk and recorder by the county commissioners is not an infraction of the provision of this section which prohibits the establishment of county officers other than those therein enumerated. *Dunbar v. Canyon County*, 6 Idaho 725, 59 P. 536 (1899).

Salaries of deputies duly and regularly employed pursuant to authority conferred by board of commissioners are a county charge, but salaries of deputies not so authorized are not a county charge. *Taylor v. Canyon County*, 7 Idaho 171, 61 P. 521 (1900).

This provision was not intended to repeal R. C., § 1815, and the act amendatory thereof, any further than to relieve the county from the payment of all deputies' salaries except those appointed by the sheriff, auditor, recorder and clerk, when duly empowered by the board of county commissioners, and the salaries of such deputies duly fixed. *Taylor v. Canyon County*, 7 Idaho 171, 61 P. 521 (1900).

A merit system which prohibits the dis-

missal of deputies and other employees without cause does not violate the sheriff's constitutional right to appoint deputies and other employees. *Hansen v. White*, 114 Idaho 907, 762 P.2d 820 (1988), 947 F.2d 1378 (9th Cir. 1991).

The state presented undisputed evidence that the county sheriff appointed the officer as a special deputy sheriff and § 67-2337 provides that peace officers may perform their functions and duties outside of the limits of their respective city or political subdivision at the request of the chief law enforcement officer of another city or political subdivision; therefore, because officer's assistance was requested by the county sheriff, he had authority to stop and arrest defendant outside of the city limits and consequently, the arrest was valid. *State v. Goerig*, 121 Idaho 108, 822 P.2d 1005 (Ct. App. 1991).

Although county commissioners have the sole authority to authorize the hiring of deputy sheriffs, they do not have the authority to impose qualifications to be followed in hiring these deputies. *Barth v. Canyon County*, 128 Idaho 707, 918 P.2d 576 (1996).

Assessment of Property.

Under this section, it is essential that the assessment of property located wholly within a county shall be made by the assessor elected by the voters of the county. *Blomquist v. Board of Comm'rs*, 25 Idaho 284, 137 P. 174 (1913).

When Idaho was admitted, this section provided that county assessor was ex officio tax collector. In 1912 this section was amended so as to provide that county treasurer should be ex officio tax collector. *Fremont County v. Salisbury*, 48 Idaho 465, 285 P. 459 (1929).

This section does not prescribe the duties of the county assessor nor does any other section in this article. The whole matter of who shall assess property for taxing purposes is left to the legislature under article 7, §§ 2 and 5. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

"The state board of equalization is a constitutional board, art. 7, § 12. The assessor is a constitutional officer, art. 18, § 6. Thus of equal constitutional creation and authority whose duties are equally to be prescribed by the legislature, art. 7, § 12, art. 18, § 11." The state board of equalization has discretionary power, not only to value and assess operating property but also to determine what property to value and assess as operating property such as property used but not owned by a railroad company. *Ada County v. Bottolfsen*, 61 Idaho 363, 102 P.2d 287 (1940).

City Police Officers.

The legislature is required to prescribe the duties of city police officers. *Monson v. Boyd*, 81 Idaho 575, 348 P.2d 93 (1959).

Commissioners.

There is no such office as chairman of the board of county commissioners and the legislature is prohibited by the Constitution from creating it. The chairman is simply a member of the board designated to discharge certain duties. No term has been fixed during which he may preside and he may be removed by the board. *Prichard v. McBride*, 28 Idaho 346, 154 P. 624 (1916), overruled on other grounds, *Gowey v. Siggelkow*, 85 Idaho 574, 382 P.2d 764 (1963).

The board of commissioners is a constitutional board. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

The chairman is merely a member of the board of county commissioners, who has been designated by the board to discharge certain duties incidental to its chairmanship and no term during which he shall preside having been fixed, he cannot be heard to complain if the board sees fit to depose him and to designate another of its members to discharge those duties. *Gowey v. Siggelkow*, 85 Idaho 574, 382 P.2d 764 (1963).

Authority of budget committee of public health district under § 39-423 does not violate Const., Art. 18, § 6 by extending constitutional power of county commissioners to levy taxes beyond their own county; the passing of the budget is not a levy of the tax. *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972).

Construction.

This provision as amended is self-operative. *State v. Malcom*, 39 Idaho 185, 226 P. 1083 (1924).

Constitutional provisions are to be construed as mandatory unless by express provision or by necessary implication different intention is manifested. *State v. Malcom*, 39 Idaho 185, 226 P. 1083 (1924).

County and Municipal Officers Distinguished.

This provision of the Constitution distinguishes county officers from municipal officers, making the first constitutional officers, while the creation of municipal officers is left wholly with the legislature. *Hodges v. Tucker*, 25 Idaho 563, 138 P. 1139 (1914).

Deputy Court Clerk.

The county commissioners' power, at least with respect to the clerk of the district court, is limited and cannot be exercised to override every hiring decision; upon a showing to the proper tribunal that a deputy or clerical assistant is needed, the county commissioners must authorize the appointment. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

The district judge's authority to supervise the clerk of the district court in the discharge of clerical duties does not include the author-

ity or power to dictate to the clerk who shall be hired as an assistant or as a deputy. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

District Court Clerk.

The power and control of the judicial branch over the officer of the clerk of the district court is not absolute; it cannot be exercised when the clerk is carrying out the duties of county auditor and recorder. *Crooks v. Maynard*, 112 Idaho 312, 732 P.2d 281 (1987).

A county board of commissioners does not have the authority to promulgate policies or issue orders which limit or direct the hiring decisions of a clerk of the district court. *Estep v. Commissioners*, 122 Idaho 345, 834 P.2d 862 (1992).

The clerk of the court, by virtue of the office created in Const. Art. 5, § 16, also is possessed of other powers and duties which are nonjudicial, but the clerk is nevertheless and foremost a judicial official. *Estep v. Commissioners*, 122 Idaho 345, 834 P.2d 862 (1992).

Duties of Officers.

Where Constitution devolves duty on one officer, legislature can not substitute another. *State v. Malcom*, 39 Idaho 185, 226 P. 1083 (1924).

Legislature can not enlarge or decrease scope of constitutional office where it is clearly fixed by Constitution. *State v. Malcom*, 39 Idaho 185, 226 P. 1083 (1924).

In action for damages for failure to perform duties imposed upon constitutional officer, by unconstitutional statute, he is not estopped to set up unconstitutionality of statute, nor is he or his bondsmen liable for failure to perform duties thus attempted to be thrust upon him. *State v. Malcom*, 39 Idaho 185, 226 P. 1083 (1924).

An officer charged with the care of public money is liable for its loss though he be free from any negligence causing or contributing to the loss; he and his sureties must make good the loss regardless of his freedom from negligence. Applied to funds collected by county assessor and deposited in a vault in his office and stolen by county prisoners, trustees, doing janitor work in the court house. *Bonneville County v. Standard Accident Ins. Co.*, 57 Idaho 657, 67 P.2d 904 (1937).

The imposition of new duties upon county officers is authorized by the Constitution. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

The statutes relating to drivers' licenses do not take away from the sheriff and give to another officer any duty which the sheriff is constitutionally entitled to perform. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

Effect of Amendments.

Constitutional amendment separating two offices theretofore combined which provides that "the legislature by general and uniform laws" shall provide for the election biennially of such officers is not self-executing, and does not go into full operation until such laws have been enacted, and a general biennial election has been held thereunder. *Blake v. Board of Comm'rs*, 5 Idaho 163, 47 P. 734 (1897).

This amendment (No. 10) was regularly submitted and adopted by the electors of the state in accordance with the provisions of the Constitution, such amendment thereby becomes a part of the Constitution of this state. *Utter v. Mosely*, 16 Idaho 274, 100 P. 1058, 133 Am. St. R. 94 (1909).

Amendment No. 22, which provides, "by striking out the words 'who is ex officio tax collector,' after the words 'a county assessor,' and inserting the words 'and also ex officio tax collector' after the words 'a county treasurer, who is ex officio public administrator,'" is self-operative, and became a part of the state Constitution upon its adoption by the voters of the state at the general election on the 5th of November, 1912. *Cleary v. Kincaid*, 23 Idaho 782, 131 P. 1117 (1913).

The adoption of the amendment No. 22 in no way affects the terms of the officers mentioned, the time of their election, or their compensation. *Ward v. Holmes*, 26 Idaho 602, 144 P. 1104 (1914).

Prior to the amendment of this section, at the election held in November, 1928, (No. 22), C.S. §§ 3272 (repealed), 3313 (now 63-2001) and 3321 (repealed) were unconstitutional and void, because this section of the Constitution did not then authorize the assessor to collect taxes. *Lemhi County ex rel. Gilbreath v. Boise Livestock Loan Co.*, 47 Idaho 712, 278 P. 214 (1929).

Employment of Counsel.

Board of county commissioners has no authority to employ an attorney to act by the year as legal adviser for county. *Meller v. Board of Comm'rs*, 4 Idaho 44, 35 P. 712 (1894); *Hampton v. Board of Comm'rs*, 4 Idaho 646, 43 P. 324 (1896).

Necessity for employment of attorney by the year as legal adviser for county must be apparent and facts creating such necessity must be made a matter of record by the commissioners. *Hampton v. Board of Comm'rs*, 4 Idaho 646, 43 P. 324 (1896).

Commissioners must act as a board. *Conger v. Board of County Comm'rs*, 4 Idaho 740, 48 P. 1064 (1896).

Where it is shown by record of the county commissioners that existence of a county is involved, and that the constitutionality of an act creating a new county is to be litigated, county commissioners are justified in employ-

ing counsel. *Ravenscraft v. Board of Comm'rs*, 5 Idaho 178, 47 P. 942 (1897).

County commissioners may employ counsel only in matters over which they have jurisdiction and control; they can not control or interfere with criminal prosecutions or employ counsel to assist the district attorney in the conduct thereof. *Conger v. Board of County Comm'rs*, 5 Idaho 347, 48 P. 1064 (1897); *Adamson v. Board of County Comm'rs*, 27 Idaho 190, 147 P. 785 (1915).

County commissioners are expressly empowered to employ counsel in civil cases when necessary. *Barnard v. Young*, 43 Idaho 382, 251 P. 1054 (1926).

There is no objection to commissioners contracting with attorneys upon contingent fee basis so long as such fee is not unreasonable in view of services to be performed. *Barnard v. Young*, 43 Idaho 382, 251 P. 1054 (1926).

In providing that county commissioners may employ counsel when necessary, this section prohibits all other county officials from doing so. *Clayton v. Barnes*, 52 Idaho 418, 16 P.2d 1056 (1932).

Where the scheme for hiring additional counsel on behalf of the county was, for the most part, followed, the county was bound to perform pursuant to the contract, and the allocation of money set the limit for payment of legal services to be provided even though that allocation was not the same as fixing compensation. *Pena v. Minidoka County*, 133 Idaho 222, 984 P.2d 710 (1999).

This provision was never intended to permit the county commissioners to employ counsel over matters, such as the prosecution of criminal cases, of which other officers are given control. *Pena v. Minidoka County*, 133 Idaho 222, 984 P.2d 710 (1999).

Fees.

The moneys collected by the prosecutor as a result of contracts with various municipalities to prosecute misdemeanors on behalf of the municipalities did not constitute fees collected by a county officer for the performance of duties of his office, nor were the moneys received for the performance of the "duties" of the office of prosecuting attorney; rather, they were personal funds received in his capacity as a private individual for the performance of contractual obligations not relating to the duties of the office of prosecuting attorney, and the prosecuting attorney was not required to reimburse the county. *Derting v. Walker*, 112 Idaho 1055, 739 P.2d 354 (1987).

Review of Tax Assessment.

Statute authorizing the district court on appeal to "modify" county board of equalization's tax assessment is not invalid as conferring on the judiciary executive functions. *McGoldrick Lumber Co. v. Benewah County*, 54 Idaho 704, 35 P.2d 659 (1934).

Term of Office.

The Constitution provides for biennial election of county officers and it is left entirely to the legislature to provide time of holding election and when term shall commence and end. *Clark v. Wonnacott*, 30 Idaho 98, 162 P. 1074 (1917).

Where, as here, the law does not purport to fix the term of the chairman of the board of trustees nor provide any grounds upon which such officer may be removed, nor is any mention made of the power or authority to remove such officer, the general rule, almost universally accepted applies in such case, that is, the power to remove is incident to the power to appoint, and that the authority to appoint an officer carries with it the authority to remove such officer in the absence of any constitutional or statutory restriction. *Gowey v. Siggelkow*, 85 Idaho 574, 382 P.2d 764 (1963).

The 1964 amendment of this section, increasing the term of office for the county sheriff from two to four years, commencing with the general election in 1964, was self-executing notwithstanding the direction to the legislature to provide for election every four years and sheriffs elected in 1964 were elected for four-year terms regardless of the failure of the 1965 legislature to make such provision. *Haile v. Foote*, 90 Idaho 261, 409 P.2d 409 (1965).

Opinions of Attorney General. County commissioners have power to authorize appointment of deputies and employees for other county offices, to set salaries for these deputies and employees, and to insure that their work schedules are in compliance with the Fair Labor Standards Act. To the extent the commissioners determine that a countywide personnel system is the most efficient and professional way to carry out these responsibilities, commissioners would have power to create such a system and to hire employees to staff it; however, the commissioners could not use such a system to control the other county officers or to judge their job performance. OAG 86-10.

A court cannot simply appoint someone and call him or her a "marshal," thereby conferring peace officer status and enabling the person to carry a concealed weapon, serve arrest warrants, take custody of prisoners, and secure courtrooms; however, if the sheriff cooperates with the court, a "marshal" could be authorized to perform all the sheriff's court attendance duties, after being deputized by the sheriff. OAG 87-3.

Section 31-3010 (now repealed) is not valid statutory authority for the appointment of special constables to serve as court attendants; the duties of court attendants, formerly split between sheriffs and constables, now rest solely with sheriffs, and if there are

no constables, there can be no special constables to perform constable duties. Thus, in the few counties where "special constables" have been appointed to attend the court, they are acting without statutory authority, unless deputized by the sheriff or justified by exigent circumstances. OAG 87-3.

The office of constable is defunct, and the duty of attending court is now statutorily assigned to the sheriff; since the sheriff is charged with these duties, the courts have no implied power under § 31-3002 (now repealed) to appoint constables to attend to magistrate's courts. OAG 87-3.

The board of county commissioners does not have the authority to hire civil counsel out-

side of the county prosecutor's office on a long-term continuous basis unless they comply with the standard of "necessity" mandated by this section and before hiring such counsel the commissioners must conduct a case-by-case analysis and state the facts which create the necessity of hiring such counsel and must make these reasons a matter of record which are reviewable by the courts; mere comfort level or convenience does not rise to the level of necessity in this context. OAG 93-8.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1803, 1812, 1859.

§ 7. County officers — Salaries. — All county officers and deputies when allowed, shall receive, as full compensation for their services, fixed annual salaries, to be paid monthly out of the county treasury, as other expenses are paid. All actual and necessary expenses incurred by any county officer or deputy in the performance of his official duties, shall be a legal charge against the county, and may be retained by him out of any fees which may come into his hands. All fees which may come into his hands from whatever source, over and above his actual and necessary expenses, shall be turned into the county treasury at the end of each quarter. He shall at the end of each quarter, file with the clerk of the board of county commissioners, a sworn statement, accompanied by proper vouchers, showing all expenses incurred and all fees received, which must be audited by the board as other accounts.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 7. The officers provided by section six of this article shall receive annually as compensation for their services as follows: sheriff, not more than four thousand dollars and not less than one thousand dollars, together with such mileage as may be prescribed by law; clerk of the district court, who is ex officio auditor and recorder, not more than three thousand dollars, and not less than five hundred dollars; probate judge, who is ex officio county superintendent of public instruction, not more than two thousand dollars, and not less than five hundred dollars; county assessor, who is ex officio tax collector, not more than three thousand dollars, and not less than five hundred dollars; county treasurer, who is ex officio public administrator, not more than one thousand dollars, and not less than three hundred dollars; coroner, not more than five hundred dollars; county surveyor, not more than one thousand dollars; county commissioners, such per diem and mileage as may be prescribed by law; and justices of the peace and constables such fees as may be prescribed by law."

The section was amended, as proposed by S.L. 1897, p. 185, H.J.R. No. 10, and ratified

at the general election in November, 1898, to read as follows:

"§ 7. All county officers, and deputies when allowed, shall receive, as full compensation for their services, fixed annual salaries, to be paid quarterly out of the county treasury, as other expenses are paid.

All actual and necessary expenses, incurred by any county officer or deputy, in the performance of his official duties, shall be a legal charge against the county, and may be retained by him out of any fees, which may come into his hands. All fees, which may come into his hands from whatever source, over and above his actual and necessary expenses, shall be turned into a county treasury at the end of each quarter. He shall, at the end of each quarter, file with the clerk of the board of county commissioners, a sworn statement, accompanied by proper vouchers, showing all expenses incurred and all fees received, which must be audited by the board as other accounts."

The section was again amended, as proposed by S.L. 1927, p. 586, H.J.R. No. 4, and ratified at the general election in November, 1928, to read as it now appears.

Cross ref. Fees of county officers, §§ 31-3201 — 31-3218.

Salaries of county officers, §§ 31-3101 — 31-3108, 31-3113.

Cited in: *Cunningham v. Moody*, 3 Idaho 125, 28 P. 395, 34 Am. St. R. 269 (1891); *Eakin v. Nez Perce County*, 4 Idaho 131, 36 P. 702 (1894); *Campbell v. Board of Comm'rs*, 4 Idaho 181, 37 P. 329 (1894); *Naylor v. Vermont Loan & Trust Co.*, 6 Idaho 251, 55 P. 297 (1898); *Taylor v. Canyon County*, 7 Idaho 171, 61 P. 521 (1900); *Rhea v. Board of County Comm'rs*, 13 Idaho 59, 88 P. 89 (1907); *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1909); *Lincoln County v. Twin Falls N. Side Land & Water Co.*, 23 Idaho 433, 130 P. 788 (1913); *Leonard v. St. Clair*, 27 Idaho 568, 149 P. 1058 (1915); *Planting v. Board of County Comm'rs*, 95 Idaho 484, 511 P.2d 301 (1973).

ANALYSIS

Accounting for fees.

Compensation to officers.

County counsel.

Decisions prior to amendment.

Payment for services as counsel.

Prosecutor.

Purpose.

Accounting for Fees.

Fees received by county treasurer in acting as ex officio public administrator, must be accounted for and reported to the county and can not be retained by officer for his personal or individual use. *Appeal of Rice*, 12 Idaho 305, 85 P. 1109 (1906).

Fees received by clerk of court in taking proofs made upon government lands, and legal fees received by probate judge in solemnizing marriages, must be paid into county treasurer. *Rhea v. Board of County Comm'rs*, 12 Idaho 455, 88 P. 89 (1906).

Fees collected for drivers' licenses are "state money," even though collected by sheriffs, and are not "fees" within contemplation of constitutional provision relating to pay of county officers. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

Compensation to Officers.

A county officer who receives greater compensation for his services than is allowed by this section is liable to the county for the excess, and may be sued by the county therefor, although the commissioners allowed his claim for the amount so received. *Ada County v. Gess*, 4 Idaho 611, 43 P. 71 (1895).

Legislature is authorized to empower county commissioners of various counties of state to fix salaries of county officers of their respective counties, except in the matter of fixing their own salaries. Salary act of March 7, 1899, is conformable to the provisions of this section except in so far as it authorizes commissioners to fix their own salaries.

Stookey v. Board of Comm'rs, 6 Idaho 542, 57 P. 312 (1899).

This section as amended abrogates S.L. 1891, p. 177, as to sheriff's mileage in criminal cases, and he is entitled to no mileage therein. *Ellis v. Bingham County*, 7 Idaho 86, 60 P. 79 (1900).

This provision limits compensation that shall be paid to county officials and their deputies for all services rendered to county. *McRoberts v. Hoar*, 28 Idaho 163, 152 P. 1046 (1915).

Prosecuting attorney is entitled to no additional compensation for performing any of his official duties. *Givens v. Carlson*, 29 Idaho 133, 157 P. 1120 (1916).

Sheriff's compensation is limited to his salary and reimbursement for expenses in the discharge of his duties and he is not entitled to retain money received by him for performing a service while acting as sheriff, such as conveying prisoners to the penitentiary, though in so acting he was not performing a duty exacted of him by law. *Nez Perce County v. Dent*, 53 Idaho 787, 27 P.2d 979 (1933).

The county sheriff is a county officer whose fixed annual salary is to be set by the county commissioners. *LaBrosse v. Board of Comm'rs*, 105 Idaho 730, 672 P.2d 1060 (1983).

The sheriff's salary, which was set in September during the budget process rather than in April as formerly required by § 31-3106, was nonetheless "fixed" for purposes of this section and since the sheriff's salary was fixed, it was protected within the meaning of this section and could not be decreased during the fiscal year. *LaBrosse v. Board of Comm'rs*, 105 Idaho 730, 672 P.2d 1060 (1983) (decision prior to 1982 amendment to § 31-3106).

County Counsel.

This section and § 6 of this article restricts the power to employ counsel to the county commissioners and prohibits other county officers from doing so. *Clayton v. Barnes*, 52 Idaho 418, 16 P.2d 1056 (1932).

Decisions Prior to Amendment.

Clerk of the district court, as such, and as auditor and recorder, can not receive as compensation for his own use, for the performance of his duties in all these capacities, any sum in excess of \$3000 for any one year. *Hillard v. Shoshone County*, 3 Idaho 103, 27 P. 678 (1891).

Maximum compensation to be paid to the assessor and tax collector is limited by this section to \$3000 and he can in no event receive a larger sum. *Guheen v. Curtis*, 3 Idaho 443, 31 P. 805 (1892).

Where probate judge acts as his own clerk, his compensation as judge, clerk and county superintendent can not exceed more than \$2000 for all his services in that capacity;

where he appoints a clerk, he and his clerk together can not receive more than \$2000. *Ada County v. Ryals*, 4 Idaho 365, 39 P. 556 (1895).

The object of this section was to make county offices self-sustaining and to limit cost of maintenance to the fees provided by law, except when such fees do not amount to the minimum salary fixed by law. *Woodward v. Board of Comm'rs*, 5 Idaho 524, 51 P. 143 (1897).

Payment for Services as Counsel.

Outside counsel was entitled to payment for his services as counsel to the prosecutor in regard to a prohibition action which was outside the parties' contract but provided for under the state Constitution. *Pena v. Minidoka County*, 133 Idaho 222, 984 P.2d 710 (1999).

Prosecutor.

The moneys collected by the prosecutor as a result of contracts with various municipalities to prosecute misdemeanors on behalf of the municipalities did not constitute fees collected by a county officer for the performance of duties of his office, nor were the moneys received for the performance of the "duties" of the office of prosecuting attorney; rather, they were personal funds received in his capacity as a private individual for the performance of contractual obligations not relating to the

duties of the office of prosecuting attorney, and the prosecuting attorney was not required to reimburse the county. *Derting v. Walker*, 112 Idaho 1055, 739 P.2d 354 (1987).

Purpose.

This section was enacted to protect county officers' salaries from changes in the makeup of the county board and changing opinions of the commissioners on the board. *LaBrosse v. Board of Comm'rs*, 105 Idaho 730, 672 P.2d 1060 (1983).

Opinions of Attorney General. County commissioners have power to authorize appointment of deputies and employees for other county offices, to set salaries for these deputies and employees, and to insure that their work schedules are in compliance with the Fair Labor Standards Act. To the extent the commissioners determine that a countywide personnel system is the most efficient and professional way to carry out these responsibilities, commissioners would have power to create such a system and to hire employees to staff it; however, the commissioners could not use such a system to control the other county officers or to judge their job performance. OAG 86-10.

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. II, p. 1835.

§ 8. County officers — How paid. — The compensation provided in section seven for the officers therein mentioned shall be paid by fees or commissions, or both, as prescribed by law. All fees and commissions received by such officers in excess of the maximum compensation per annum provided for each in section seven of this article shall be paid to the county treasurer for the use and benefit of the county. In case the fees received in any one year by any one of such officers shall not amount to the minimum compensation per annum therein provided, he shall be paid by the county a sum sufficient to make his aggregate annual compensation equal to such minimum compensation.

Cited in: *Hillard v. Shoshone County*, 3 Idaho 103, 27 P. 678 (1891); *Eakin v. Nez Perce County*, 4 Idaho 131, 36 P. 702 (1894); *Campbell v. Board of Comm'rs*, 4 Idaho 181, 37 P. 329 (1894); *Ada County v. Ryals*, 4 Idaho 365, 39 P. 556 (1895); *Taylor v. Canyon County*, 7 Idaho 171, 61 P. 521 (1900).

ANALYSIS

Accountability for fees.

Payment of officers.

Salaries of officers.

Accountability for Fees.

Fees received by an officer for which he must account to the county include fees

earned, though not collected, by the officer. *Naylor v. Vermont Loan & Trust Co.*, 6 Idaho 251, 55 P. 297 (1898).

Fees collected for drivers' licenses are "state money," even though collected by sheriffs, and are not "fees" within contemplation of constitutional provision relating to pay of county officers. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

The moneys collected by the prosecutor as a result of contracts with various municipalities to prosecute misdemeanors on behalf of the municipalities did not constitute fees collected by a county officer for the performance of duties of his office, nor were the moneys received for the performance of the "duties" of

the office of prosecuting attorney; rather, they were personal funds received in his capacity as a private individual for the performance of contractual obligations not relating to the duties of the office of prosecuting attorney, and the prosecuting attorney was not required to reimburse the county. *Derting v. Walker*, 112 Idaho 1055, 739 P.2d 354 (1987).

Payment of Officers.

R.S., § 2120 (no longer in effect), providing for payment of compensation of county officers out of the county treasury upon warrants, is in some degree repugnant to this section. *Naylor v. Vermont Loan & Trust Co.*, 6 Idaho 251, 55 P. 297 (1898).

§ 9. County officers — Liability for fees. — The neglect or refusal of any county officer or deputy to account for and pay into the county treasury any money received as fees or compensation, in excess of his actual and necessary expenses, incurred in the performance of his official duties, within ten (10) days after his quarterly settlement with the county shall be a felony, and the grade of the crime shall be embezzlement of public funds, and be punishable as provided for such offenses.

Compiler's notes. As originally adopted, this section provided as follows:

"§ 9. The neglect or refusal of any officer named in this article to account for and pay into the county treasury any money received as fees or compensation in excess of the maximum amount allowed to such officer by the provisions of this article, within forty days after the receipt of the same, shall be a felony, and the grade of the crime shall be the embezzlement of public moneys, and be punishable as provided for such offense."

It was amended as proposed by S.L. 1897, p. 185, H.J.R. No. 10, and ratified at the general election in 1898 to read as it now appears.

Cited in: *Eakin v. Nez Perce County*, 4 Idaho 131, 36 P. 702 (1894); *In re Rice*, 12 Idaho 305, 85 P. 1109 (1906).

ANALYSIS

Civil liability.
Prosecutor.
Sheriffs.

Civil Liability.

This provision applies only to liability of a derelict officer criminally, and has nothing to do with civil liability of officer or his sureties. *Ada County v. Ellis*, 5 Idaho 333, 48 P. 1071 (1897).

§ 10. Board of county commissioners. — The board of county commissioners shall consist of three (3) members. Their terms of office shall be as follows: At the general election of 1936 two (2) members shall be elected for a term of two (2) years and one (1) member for a term of four (4)

Salaries of Officers.

Where compensation of assessors is by statute to be paid by commissioners and fees, county commissioners exceed their power in allowing an assessor a quarterly salary, and an order made by them allowing such salary is void, and may be attacked directly or collaterally. *Fremont County v. Brandon*, 6 Idaho 482, 56 P. 264 (1899), overruled on other grounds, *Bannock County v. Bell*, 8 Idaho 1, 65 P. 710 (1901).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1865.

Prosecutor.

The moneys collected by the prosecutor as a result of contracts with various municipalities to prosecute misdemeanors on behalf of the municipalities did not constitute fees collected by a county officer for the performance of duties of his office, nor were the moneys received for the performance of the "duties" of the office of prosecuting attorney; rather, they were personal funds received in his capacity as a private individual for the performance of contractual obligations not relating to the duties of the office of prosecuting attorney, and the prosecuting attorney was not required to reimburse the county. *Derting v. Walker*, 112 Idaho 1055, 739 P.2d 354 (1987).

Sheriffs.

Failure of county or surety on sheriff's bond to claim a preference for fees deposited in insolvent bank is no defense in surety's suit against sheriff for reimbursement for sums paid to county to cover deficiency in amount recovered from bank. *Fidelity & Deposit Co. v. Mason*, 55 Idaho 397, 42 P.2d 486 (1935).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1865.

years; at each biennial election thereafter one (1) member shall be elected for a term of two (2) years and one (1) for a term of four (4) years. The legislature shall enact the necessary measures to put this provision into effect and in so doing shall allot such four (4) year term to each commissioner's election district or like subdivision of the county which may be provided by law, in rotation.

Compiler's notes. As originally adopted, this section provided as follows:

“§ 10. **Board of county commissioners.** — The board of county commissioners shall consist of three members whose term of office shall be two years.”

It was amended, as proposed by S.L. 1933, p. 471, S.J.R. No. 7, and ratified at the general election in November, 1934, to read as it now appears.

Cross ref. Board of county commissioners, §§ 31-701 — 31-710.

§ 11. Duties of officers. — County, township, and precinct officers shall perform such duties as shall be prescribed by law.

Cited in: Conger v. Board of County Comm'rs, 5 Idaho 347, 48 P. 1064 (1897); State ex rel. Griffith v. Vineyard, 9 Idaho 134, 72 P. 824 (1903); In re Sly, 9 Idaho 779, 76 P. 766 (1904); Fenton v. Board of Comm'rs, 20 Idaho 392, 119 P. 41 (1911); Leonardson v. Moon, 92 Idaho 796, 451 P.2d 542 (1969).

ANALYSIS

Assessment of property.
County commissioners.
Levying and collecting of taxes.
New duties.
Sheriff.

Assessment of Property.

The state board of equalization and the assessor are of equal constitutional creation and authority whose duties are equally to be prescribed by the legislature, under this section. The board has discretionary power to determine what property to value and assess, such as property used but not owned by a railroad company. *Ada County v. Bottolfsen*, 61 Idaho 363, 102 P.2d 287 (1940).

County Commissioners.

County commissioners must act as board and have only such power as is expressly conferred upon them by law. *Shillingford v. Benewah County*, 48 Idaho 447, 282 P. 864 (1929).

Cited in: *Blomquist v. Board of Comm'rs*, 25 Idaho 284, 137 P. 174 (1913).

Constitutional Board.

The board of commissioners is a constitutional board. *Udy v. Cassia County*, 65 Idaho 585, 149 P.2d 999 (1944).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1870.

Levying and Collecting of Taxes.

There is no conflict between this constitutional provision and legislation creating public health districts since under the legislation the levying and collecting of taxes is performed at and by the county level of government properly acting in its executive capacity, and the counties' taxing function is not intruded upon. *District Bd. of Health v. Chancey*, 94 Idaho 944, 500 P.2d 845 (1972).

New Duties.

The imposition of new duties upon county officers is authorized by the Constitution. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

This section clearly authorizes the legislature to impose additional duties on county offices. *Williams v. Swensen*, 93 Idaho 542, 467 P.2d 1 (1970).

Sheriff.

The statutes relating to drivers' licenses do not take away from the sheriff and give to another officer any duty which the sheriff is constitutionally entitled to perform. *State ex rel. Wright v. Headrick*, 65 Idaho 148, 139 P.2d 761 (1943).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1873.

§ 12. Optional forms of county government. — The legislature by general law may provide for optional forms of county government for counties, which shall be the exclusive optional forms of county government.

No optional form of county government shall be operative in any county until it has been submitted to and approved by a majority of the electors voting thereon in the county affected at a general or special election as provided by law. The electorate at said election shall be allowed to vote on whether they shall retain their present form of county government or adopt any of the optional forms of county government. In the event an optional form shall be adopted, the question whether to return to the original form or any other optional form, may be placed at subsequent elections, but not more frequently than each four years. When an optional form of county government has been adopted, the provisions of this section supersede sections 5, 6 and 10 of this article and sections 16 and 18 of article V.

Compiler's notes. This section was added to Article XVIII as proposed by H.J.R. No. 17 (S.L. 1994, p. 1499) and ratified at the general election on November 8, 1994.

Article XIX

APPORTIONMENT

SECTION.

1. Senatorial districts. [Superseded.]
2. Representative districts. [Superseded.]

§ 1. Senatorial districts. [Superseded.]

Compiler's notes. This article was superseded by the code provisions for legislative districts, §§ 67-201, 67-202, 67-204.

As originally adopted, this section provided as follows:

“§ 1. **Senatorial districts.** — Until otherwise provided by law the apportionment of the two houses of the legislature shall be as follows:

The first senatorial district shall consist of the county of Shoshone, and shall elect two senators.

The second shall consist of the counties of Kootenai and Latah, and shall elect one senator.

The third shall consist of the counties of Nez Perce and Idaho, and shall elect one senator.

The fourth shall consist of the counties of Nez Perce and Latah, and shall elect one senator.

The fifth shall consist of the county of Latah, and shall elect one senator.

The sixth shall consist of the county of

Boise, and shall elect one senator.

The seventh shall consist of the county of Custer, and shall elect one senator.

The eighth shall consist of the county of Lemhi, and shall elect one senator.

The ninth shall consist of the county of Logan, and shall elect one senator.

The tenth shall consist of the county of Bingham, and shall elect one senator.

The eleventh shall consist of the counties of Bear Lake, Oneida and Bingham, and shall elect one senator.

The twelfth shall consist of the counties of Owyhee and Cassia, and shall elect one senator.

The thirteenth shall consist of the county of Elmore, and shall elect one senator.

The fourteenth shall consist of the county of Alturas, and shall elect one senator.

The fifteenth shall consist of the county of Ada, and shall elect two senators.

The sixteenth shall consist of the county of Washington, and shall elect one senator.”

§ 2. Representative districts. [Superseded.]

Compiler's notes. This article was superseded by the code provisions for legislative districts, §§ 67-201, 67-202, 67-204.

As originally adopted, this section provided as follows:

“§ 2. **Representative districts.** — The

several counties shall elect the following members of the house of representatives:

The county of Ada, three members.

The counties of Ada and Elmore, one member.

The county of Alturas, two members.

The county of Boise, two members.
 The county of Bear Lake, one member.
 The county of Bingham, three members.
 The county of Cassia, one member.
 The county of Custer, two members.
 The county of Elmore, one member.
 The county of Idaho, one member.
 The counties of Idaho and Nez Perce, one member.
 The county of Kootenai, one member.
 The county of Latah, two members.

The counties of Kootenai and Latah, one member.
 The county of Logan, two members.
 The county of Lemhi, two members.
 The county of Nez Perce, one member.
 The county of Oneida, one member.
 The county of Owyhee, one member.
 The county of Shoshone, four members.
 The county of Washington, two members.
 The counties of Bingham, Logan and Alturas, one member."

Article XX

AMENDMENTS

SECTION.

1. How amendments may be proposed.
2. Submission of several amendments.
3. Revision or amendment by convention.

SECTION.

4. Submission of revised constitution to people.

§ 1. How amendments may be proposed. — Any amendment or amendments to this Constitution may be proposed in either branch of the legislature, and if the same shall be agreed to by two-thirds ($\frac{2}{3}$) of all the members of each of the two (2) houses, voting separately, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and it shall be the duty of the legislature to submit such amendment or amendments to the electors of the state at the next general election, and cause the same to be published without delay for at least three (3) times in every newspaper qualified to publish legal notices as provided by law. Said publication shall provide the arguments proposing and opposing said amendment or amendments as provided by law, and if a majority of the electors shall ratify the same, such amendment or amendments shall become a part of this Constitution.

Compiler's notes. As originally adopted this section provided as follows:

"§ 1. How amendments may be proposed. — Any amendment or amendments to this Constitution may be proposed in either branch of the legislature, and if the same shall be agreed to by two-thirds of all the members of each of the two houses, voting separately, such proposed amendment or amendments shall, with the yeas and nays thereon, be entered on their journals, and it shall be the duty of the legislature to submit such amendment or amendments to the electors of the state at the next general election, and cause the same to be published without delay for at least six consecutive weeks, prior to said election, in not less than one newspaper of general circulation published in each county; and if a majority of the electors shall ratify the same, such amendment or amendments shall become a part of this Constitution."

This section was amended as proposed by

S.J.R. No. 10, (S.L. 1974, p. 1890) and ratified at the general election on November 5, 1974, to read as it now appears.

Cross ref. Advisory referendum on United States Constitutional Amendment, § 34-2217.

Amendments proposed by joint resolution in either house of legislature, § 67-507.

Comp. provisions: Cal. Art. 18, § 1.

Mont. Art. 14, § 8.

Ore. Art. 17, § 1.

Utah. Art. 23, §§ 1-3.

Wash. Art. 23, §§ 1-3.

Wyo. Art. 20, §§ 1-3.

Cited in: Holmberg v. Jones, 7 Idaho 752, 65 P. 563 (1901); Landson v. State Bd. of Canvassers, 18 Idaho 596, 111 P. 133 (1910); Blomquist v. Board of Comm'rs, 25 Idaho 284, 137 P. 174 (1913); State v. Village of Garden City, 74 Idaho 513, 265 P.2d 328 (1953); Anderson v. Boise City, 91 Idaho 527, 427 P.2d 574 (1967); Westerberg v. Andrus, 114 Idaho 401, 757 P.2d 664 (1988).

ANALYSIS

Additional statutory requirements.
Construction.

Cure of procedural defects.

Form of amendments.

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Additional Statutory Requirements.

Legislature could not by enactment of § 67-507a (repealed) modify Const., Art. 20, §§ 1 and 2 as to the requirements for the submission of a proposed constitutional amendment to the electorate; however, the Constitution being a limitation and not a grant of legislative power, it is competent for legislature to adopt additional requirements designed to secure vote on proposed amendment by informed electorate and to avoid possible uncertainty. *Penrod v. Crowley*, 82 Idaho 511, 356 P.2d 73 (1960).

Construction.

In order for an amendment to become effective, the requirements of this article must be strictly complied with, and must be adopted as in this article provided. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908); *Utter v. Moseley*, 16 Idaho 274, 100 P. 1058, 133 Am. St. R. 94 (1909).

Question submitted as a constitutional amendment does not become a constitutional amendment unless submitted and adopted in accordance with provisions of the Constitution. *Utter v. Moseley*, 16 Idaho 274, 100 P. 1058, 133 Am. St. R. 94 (1909).

This article was complied with by an amendment to art. 5, § 9, by which a direct appeal to the Supreme Court was allowed from a ruling or order of the industrial accident board. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

The Supreme Court is powerless to amend the Constitution by judicial construction or interpolation. *State ex rel. Kinyon v. Enking*, 62 Idaho 649, 115 P.2d 97 (1941).

Cure of Procedural Defects.

Where the materials published concerning proposed constitutional amendments sufficiently set forth the purpose and effect of the amendments to inform the public of the content, the statements of meaning and purpose sufficiently described the effect and impact of the proposed amendments, and the statements for and against them adequately reflected the principal arguments espoused by proponents and opponents, alleged proce-

dural defects were cured by the election, and statutory and constitutional challenges were time barred because they were not presented prior to the election. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 358, 982 P.2d 358 (1999).

Form of Amendments.

While the Constitution prescribes no particular method or form for proposing and submitting amendments to the Constitution, the better course to pursue is to indicate in the resolution proposing amendment the particular matter to be inserted or omitted as an amendment, and the particular place in the section amendment is to be inserted. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908).

The constitutional provisions for amending statutes (art. 3, § 18) do not apply to constitutional amendments. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908).

Legislature has no power to incorporate in a joint resolution, proposing amendments to the Constitution, any matter except amendment proposed and question and manner of submitting the same. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908).

Where a section of the Constitution was amended at the same time by two different amendments, and amendments adopted are directly in conflict, and it is impossible to determine which should stand as a part of the Constitution, or to reconcile the same, they both must fail. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908).

Question submitted should be same question proposed as amendment or amendments. Legislature can not propose one question and submit to voters another. *Lane v. Lukens*, 48 Idaho 517, 283 P. 532 (1929).

Where the only subject dealt with by the legislature in a proposed constitutional amendment was the class and character of securities that should be required on the loading of permanent endowment funds, other than funds arising from the disposition of university lands, the submission of a single amendment enumerating all of the acceptable securities was all that was required, rather than the submission of as many proposals as there were kinds of securities named in original section to be amended. *State ex rel. Kinyon v. Enking*, 62 Idaho 649, 115 P.2d 97 (1941).

The omission of the word, "state," in a constitutional amendment, from the enumeration of securities that might be accepted on the loaning of the permanent endowment funds, other than funds arising from a disposition of university lands, could not be held to be a mistake on the part of the legislature, when the language used in a proposed amendment was not ambiguous or uncertain, notwithstanding that the legislature subse-

quently enacted statutes in terms contrary to or contradictory of the constitutional amendment which was submitted to and adopted by the people. *State ex rel. Kinyon v. Enking*, 62 Idaho 649, 115 P.2d 97 (1941).

Journal Entry.

Provisions in this section with reference to entering proposed amendment or amendments, together with the yeas and nays vote thereon, upon the journal are mandatory. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908).

A proposed amendment to the Constitution is sufficiently "entered on the journal" of the house and senate by entries identifying the resolution and recording the votes cast in both houses without copying and recording it at length and in full in the journals. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

Proposal of Amendments.

Amendment to the Constitution may be proposed by joint resolution and need not be presented to the people by a formal statute. *Hays v. Hays*, 5 Idaho 154, 47 P. 732 (1897).

Publication.

From language employed it is clear that publication constitutes no part of submission but an act mandatorily directed as prerequisite to such submission. *Lane v. Lukens*, 48 Idaho 517, 283 P. 532 (1929).

In proceedings to compel the secretary of state to call a general election, as provided by S.L. 1929, ch. 13, where an amendment to the Constitution, Art. 4, § 1, adopted on Nov. 6, 1928, was set up to support a general demurrer, it appearing that the amendment expressly fixed the term of office of the governor, lieutenant governor, secretary of state, state auditor, state treasurer, attorney general, and superintendent of public instruction for a period of four years, and the question submitted to the voters was whether the term should be limited to the duration of four years, the amendment was void for defective submission, which was not cured by the publication, since the word "limit" carries the idea of extreme boundary, and the provisions of this article with respect to the duties of the legislature regarding publication are mandatory. *Lane v. Lukens*, 48 Idaho 517, 283 P. 532 (1929).

Legislature directing the secretary of state to publish a constitutional amendment is a sufficient compliance with the constitutional mandate that the legislature "cause the same to be published" as set out in this section; a formal statute is not required to be enacted. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

Ratification By Voters.

Where a majority of electors voting upon question of amendment of the Constitution

vote in favor of amendment, the amendment is ratified, although votes thus cast are not a majority of votes cast at general election for state officers. *Green v. State Bd. of Canvassers*, 5 Idaho 130, 47 P. 259, 95 Am. St. R. 169 (1896).

Where state board of canvassers canvass votes on a proposed amendment to the Constitution and declare that a majority of the votes were cast in favor of amendment, stating the number for and against it, it is not necessary that board should further declare, in terms, as to whether amendment was carried. *Hays v. Hays*, 5 Idaho 154, 47 P. 732 (1897).

Full information as to a proposed constitutional amendment is not required to be printed on the ballot. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

The people can not alter, change or modify a proposed constitutional amendment submitted by the legislature for the popular vote, but they must adopt or reject it as presented. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

The people, not the legislature, amend the Constitution; the proposal is initiated by the legislature, but the amendment becomes effective when ratified by the people and not otherwise. *Idaho Mut. Benefit Ass'n v. Robison*, 65 Idaho 793, 154 P.2d 156 (1944).

Statement of Purpose and Meaning.

Where statement of meaning and purpose of proposed constitutional amendment clearly explained a prohibition of gambling in Idaho, the fact that Indian gaming was not specifically named did not mean the voters had been misled; thus, the statement of purpose and meaning met the requirements of this section. *Nez Perce Tribe v. Cenarrusa*, 125 Idaho 37, 867 P.2d 911 (1993).

Time of Taking Effect.

Upon ratification of an amendment, it becomes a part of the Constitution, and while legislature might propose an amendment which, in itself, provides for the time it would become operative, yet unless such time is incorporated in amendment itself, legislature has no authority to fix a time different from that prescribed by the Constitution. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908).

The amendment of art. 18, § 6, approved by the voters at the 1964 general election became effective on and after the day of such election and a sheriff elected at such election was elected for the new term of four years, as provided by such amendment. *Haile v. Foote*, 90 Idaho 261, 409 P.2d 409 (1965).

Title of Resolution.

While a title is not required for a proposed constitutional amendment, nevertheless, if one exists, it may be resorted to as an aid to

construction. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1942).

Validity.

In determining validity or unconstitutionality of a constitutional amendment, court will not concern itself with the justice or wisdom of amendment, and will presume that legislature acted regularly in submitting the same to voters of the state, and will uphold and sustain such amendment unless it appears that the same has not been proposed, submitted, and adopted in accordance with provisions of the Constitution. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908); *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1942).

The two vital elements in any constitutional amendment are the assent of two-thirds of the legislature, and a majority of the popular vote; beyond these, other provisions are mere machinery and form. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1942).

After an amendment has been adopted, courts should be slow to declare the same

unconstitutional on technical grounds, unless the substantial requirements of the Constitution have been violated in the submission thereof. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1942).

Every reasonable presumption, both of law and fact, is to be indulged in favor of the validity of an amendment to the Constitution when it is attacked after its ratification by the people. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1942).

In passing upon the validity of a constitutional amendment, the question is not whether it is possible to condemn the amendment but whether it is possible to uphold it and the court should not condemn it unless, in its judgment, its nullity is manifest beyond a reasonable doubt. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1942).

Collateral References. Discussion of this article and section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1696, 1700.

§ 2. Submission of several amendments. — If two (2) or more amendments are proposed, they shall be submitted in such manner that the electors shall vote for or against each of them separately.

Compiler's notes. The proposed amendment to this section, of this article, as proposed by S.J.R. No. 3 (S.L. 1967, p. 1569) was defeated at the general election of November 5, 1968.

Cited in: *Green v. State Bd. of Canvassers*, 5 Idaho 130, 47 P. 259, 95 Am. St. R. 169 (1896); *Barker v. Wagner*, 96 Idaho 214, 526 P.2d 174 (1974); *Nez Perce Tribe v. Cenarrusa*, 125 Idaho 37, 867 P.2d 911 (1993).

ANALYSIS

Additional statutory requirements.

Challenge after election.

Divisible proposals.

Indivisible proposals.

Joint submission on single ballot.

Mandatory.

Purpose of section.

Ratification.

Test for duplicity.

Additional Statutory Requirements.

Legislature could not by enactment of § 67-507a (repealed) modify Const., Art. 20, §§ 1 and 2 as to requirements for submission of a proposed constitutional amendment to the electorate; however, the Constitution being a limitation and not a grant of legislative power, it is competent for legislature to adopt additional requirements designed to secure vote on proposed amendment by informed electorate and to avoid possible uncertainty. *Penrod v. Crowley*, 82 Idaho 511, 356 P.2d 73 (1960).

Challenge After Election.

An allegation that proposed constitutional amendments combine separate and incongruous amendments can be raised after an election because it deals with the substance of the amendments rather than procedures used to present them to the electorate. *Idaho Water-sheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 358, 982 P.2d 358 (1999).

Divisible Proposals.

If the thing or things proposed in a constitutional amendment can be divided into questions distinct and independent so that any one of them can be adopted without in any way being controlled, modified or qualified by the other, then there are as many amendments as there are distinct and independent questions or subjects. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

Indivisible Proposals.

Where the question submitted to the people for vote involves an amendment or change in the Constitution, even though it may contain what appears to be several or different questions, nevertheless, if they cannot be so intelligently divided that, when submitted separately, any one might be approved and all the others rejected, and, when so approved, become effective and operative, then they should be submitted as one amendment. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

Where proposed amendment to Const., Art. 5, § 22 (repealed) eliminated the words "called in question" and substituted the words "in issue" in referring to jurisdiction where boundaries or title to real property shall be in issue, it did not change the meaning of the section and was not sufficient to require separate submission or to defeat amendment after its adoption. *Penrod v. Crowley*, 82 Idaho 511, 356 P.2d 73 (1960).

Amendment to Const., Art. 5, § 22 (repealed) providing for the selection of justices of the peace and fixing their jurisdiction by statute did not violate this section since both proposals were germane to the common object and purpose of improving the administration of justice in those courts by securing more competent judges who would have broader jurisdiction. *Penrod v. Crowley*, 82 Idaho 511, 356 P.2d 73 (1960).

A proposed constitutional amendment which contains several propositions must have each proposition voted on separately unless they are dependent upon and closely related to each other. *Idaho Water Resource Bd. v. Kramer*, 97 Idaho 535, 548 P.2d 35 (1976).

Joint Submission on Single Ballot.

Where the 1998 constitutional amendments to amend Const. Art. IX, §§ 3 and 11 were related as part of a common scheme for funding education, the joint submission of the amendments to the electorate on a single ballot was constitutional, and the subsequently enacted Idaho School Bond Guaranty Act and related statutory amendments were upheld. *State Endowment Fund Inv. Bd. v. Crane*, 135 Idaho 667, 23 P.3d 129 (2001).

Mandatory.

This provision is mandatory. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908).

Purpose of Section.

The object of this section is similar to the object of art. 3, § 16. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1942).

Ratification.

The people cannot alter, change or modify a proposed constitutional amendment submitted by the legislature for the popular vote, but they must adopt or reject it as presented. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

Although initiated by the legislature, a constitutional amendment becomes effective only when ratified by the people. *Idaho Mut. Benefit Ass'n v. Robison*, 65 Idaho 793, 154 P.2d 156 (1944).

Test for Duplicity.

Under this provision of the Constitution, legislature can not incorporate into a single amendment several distinct and independent subjects and submit the same as a single amendment. Determination of question as to whether proposed change or changes in the Constitution constitute one or more amendments depends upon whether change as proposed relates to one subject and accomplishes a single purpose. If it does not, then there are as many amendments as there are independent subjects, and it matters not whether proposed change affects one or many sections or articles of the Constitution. *McBee v. Brady*, 15 Idaho 761, 100 P. 97 (1908).

The submission of the amendment to art. 5, § 9, proposing that the Supreme Court have original and appellate jurisdiction from orders of the industrial accident board and, that such appeal be limited to questions of law, was not a submission of more than one amendment within the purview of this section. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937).

The same reason ought to exist for determining the singleness of subject embraced in a legislative act as in determining whether more than one subject and essentially related matter is embodied in a single amendment to the Constitution. *Mundell v. Swedlund*, 58 Idaho 209, 71 P.2d 434 (1937); *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1942).

The test for duplicity in a constitutional amendment, when viewed in the light of cases on that subject, is not that the matters contained therein might be divided and submitted in separate questions, but that they are incongruous and essentially unrelated. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1942).

Where the combining of two proposed amendments, one relating to the way in which school endowment land proceeds were invested and the other relating to whether auctions should take place regarding only sales, as opposed to leases and sales, of school endowment lands, the fact that voters were not allowed to vote in favor of one proposal and against the other rendered the amendments unconstitutional. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 358, 982 P.2d 358 (1999).

Collateral References. Discussion of this section in constitutional convention. *Constitutional Convention Proceedings*, Vol. II, p. 1696.

§ 3. Revision or amendment by convention. — Whenever two-thirds (⅔) of the members elected to each branch of the legislature shall

deem it necessary to call a convention to revise or amend this Constitution, they shall recommend to the electors to vote at the next general election, for or against a convention, and if a majority of all the electors voting at said election shall have voted for a convention, the legislature shall at the next session provide by law for calling the same; and such convention shall consist of a number of members, not less than double the number of the most numerous branch of the legislature.

Cited in: Green v. State Bd. of Canvassers, 5 Idaho 130, 47 P. 259, 95 Am. St. R. 169 (1896); Holmberg v. Jones, 7 Idaho 752, 65 P. 563 (1901); McBee v. Brady, 15 Idaho 761, 100 P. 97 (1909); Blomquist v. Board of Comm'rs, 25 Idaho 284, 137 P. 174 (1913).

Proposed Revised Constitution.

The revision of the state's constitution by a constitutional convention is not the sole and exclusive method of revising said document, and therefore the preparation of a proposed

revised constitution by a commission on constitutional revision, established by the legislature, with submission of the proposal to the electors at general election following legislative approval was permissible. Smith v. Cenarruso, 93 Idaho 818, 475 P.2d 11 (1970).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1697.

§ 4. Submission of revised constitution to people. — Any constitution adopted by such convention, shall have no validity until it has been submitted to, and adopted by, the people.

Cited in: Green v. State Bd. of Canvassers, 5 Idaho 130, 47 P. 259, 95 Am. St. R. 169 (1896); Holmberg v. Jones, 7 Idaho 752, 65 P. 563 (1901); McBee v. Brady, 15 Idaho 761, 100 P. 97 (1909).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1698.

Article XXI

SCHEDULE AND ORDINANCE

SECTION.

1. Judicial proceedings continued.
2. Laws continued in force.
3. Territorial fines and forfeitures accrue to state.
4. Territorial bonds and obligations pass to state.
5. Territorial officers to continue in office.
6. Submission of Constitution to electors.
7. When Constitution takes effect.
8. Election proclamation to be issued.
9. Election to be ordered — Conduct of election.
10. Canvass of election returns.

SECTION.

11. Certificates of election.
12. Qualifications of officers.
13. Tenure of office.
14. Convention of first legislature.
15. Legislature to pass necessary laws.
16. Transfer of cases to state courts.
17. Seals of courts.
18. Transfer of probate matters.
19. Religious freedom guaranteed — Disclaimer of title to Indian lands.
20. Adoption of federal Constitution.

§ 1. Judicial proceedings continued. — That no inconvenience may arise from a change of the territorial government to a permanent state government, it is declared that all writs, actions, prosecutions, claims, liabilities, and obligations against the territory of Idaho, of whatsoever nature and rights of individuals, and of bodies corporate, shall continue as if no change had taken place in this government; and all process which may, before the organization of the judicial department under this Constitution,

be issued under the authority of the territory of Idaho, shall be as valid as if issued in the name of the state.

Comp. provisions: Nev. Art. 17, §§ 1-26.

Ore. Art. 18, §§ 1-11.

Utah. Art. 24, §§ 1-16.

Wash. Art. 27, §§ 1-19.

Wyo. Art. 21, §§ 1-23.

Collateral References. Discussion of this article in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1693, 1940, 1943, 2026.

§ 2. Laws continued in force. — All laws now in force in the territory of Idaho which are not repugnant to this Constitution shall remain in force until they expire by their own limitation or be altered or repealed by the legislature.

Cited in: Gilbert v. Moody, 3 Idaho 3, 25 P. 1092 (1891); Quayle v. Glenn, 6 Idaho 549, 57 P. 308 (1899); McKnight v. Grant, 13 Idaho 629, 92 P. 989, 121 Am. St. R. 287 (1907); Mix v. Board of Comm'rs, 18 Idaho 695, 112 P. 215, 32 L.R.A. (n.s.) 534 (1910); State v. Omaechevriaria, 27 Idaho 797, 152 P. 280 (1915); Blackwell Lumber Co. v. Empire Mill Co., 28 Idaho 556, 155 P. 680, 1918A Ann. Cas. 189 (1916); State v. Wharfield, 41 Idaho 14, 236 P. 862 (1925); State v. Koseris, 66 Idaho 449, 162 P.2d 172 (1945); Clark v. Alloway, 67 Idaho 32, 170 P.2d 425 (1946); Penrod v. Crowley, 82 Idaho 511, 356 P.2d 73 (1960); State v. Goodmiller, 86 Idaho 233, 386 P.2d 365 (1963); Jones v. State Bd. of Medicine, 97 Idaho 859, 555 P.2d 399 (1976); Jonasson v. Gibson, 108 Idaho 459, 700 P.2d 81 (Ct. App. 1985).

ANALYSIS

Boise city charter.

Common law.

Construction.

Organic act of the territory of Idaho.

Special charters.

Statute of limitations.

Territorial legislation.

Boise City Charter.

Under this section and art. 3, § 16, art. 11, § 2, art. 12, § 1, the Boise City charter, which was received from the territorial legislature, is subject to amendment only by a special act of the state legislature specifically referring to the charter, both in the title and in the body of the act. Bagley v. Gilbert, 63 Idaho 494, 122 P.2d 227 (1942).

Where Boise City's charter provided that city taxes should be levied by the mayor and council and assessed by the city assessor, collected by the city tax collector, the state legislature is not inhibited from transferring these duties to the county officers of Ada County, but such county officers, in the discharge of such duties, merely act as agents for the city. Bagley v. Gilbert, 63 Idaho 494, 122 P.2d 227 (1942).

Provision of Boise City's special charter as to county collecting city taxes and compensation therefor controls over general statutes on the same subjects. Bagley v. Gilbert, 63 Idaho 494, 122 P.2d 227 (1942).

Common Law.

The enactment of the first territorial legislature adopting the common law of England, so far as not repugnant to or inconsistent with the Constitution or laws of the United States, in all cases not provided for in our statutes, as the rule of decision to be followed by the courts, has been incorporated in the various codifications of our laws and is now § 73-116. Cannon v. Seybolt, 55 Idaho 796, 48 P.2d 406 (1935); Moon v. Bullock, 65 Idaho 594, 151 P.2d 765 (1944), overruled on other grounds, Doggett v. Boiler Eng'r & Supply Co., 93 Idaho 888, 477 P.2d 511 (1970).

Rights guaranteed by our Constitution are those specifically enumerated therein or which existed at common law or by statute at the time our Constitution was adopted. The Constitution gave married women no rights in addition to those they possessed at the time of its adoption and statutes designed to protect their separate property from contracts not made for their sole benefit and use, or the use of that property, are valid. Craig v. Lane, 60 Idaho 178, 89 P.2d 1008 (1939), overruled on other grounds, Coffin v. Cox, 78 Idaho 111, 298 P.2d 742 (1956).

The office of attorney general is not constitutionally vested under art. 4, § 1 with any common law powers and duties that are immune to legislative change. Padgett v. Williams, 82 Idaho 28, 348 P.2d 944 (1960).

Construction.

The guaranty found in art. 1, § 7, that the right of trial by jury shall remain inviolate, is not intended to extend right of trial by jury, but simply to secure that right as it existed at date of adoption of Constitution. Christensen v. Hollingsworth, 6 Idaho 87, 53 P. 211, 96 Am. St. 256 (1898); People ex rel. Brown v. Burnham, 35 Idaho 522, 207 P. 589 (1922).

The words "limitation," "altered," and "repealed," as used in this section, apply to all laws, special as well as general, in force at date of the adoption of the Constitution, and not repugnant to any of its provisions. The word "altered" means "to make different without destroying identity; to vary without change." *Butler v. Lewiston*, 11 Idaho 393, 83 P. 234 (1905).

This section continued in force all laws that were in force at time of adoption of Constitution and which were not repugnant thereto, and law thus included can not be considered unconstitutional because not enacted by legislature. *Archbold v. Huntington*, 34 Idaho 558, 201 P. 1041 (1921); *People ex rel. Brown v. Burnham*, 35 Idaho 522, 207 P. 589 (1922).

Even though §§ 19-4401, 19-4406 and 19-4407 which create a substantive right in a citizen to refuse to permit a search pursuant to an unsigned warrant predate the Constitution of Idaho, such right was affirmed by this section. *State v. Mathews*, 129 Idaho 865, 934 P.2d 931 (1997).

Organic Act of the Territory of Idaho.

Assuming that section 8 of the Organic Act of the Territory of Idaho did not expire by its own limitation, the legislature repealed it by enacting § 59-102 on the same subject. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

Special Charters.

Under this section, the special charters under which certain cities in the state had been incorporated were continued in force.

Boise City Nat'l Bank v. Boise City, 15 Idaho 792, 100 P. 93 (1908).

All special charters in force at time of adoption of the Constitution were continued in force, even though granted under special and local laws. *Howard v. Independent Sch. Dist. No. 1*, 17 Idaho 537, 106 P. 692 (1910).

The state legislature is empowered to amend special municipal charter without a vote of the people within the municipality, but such charter can be amended only by special legislative enactment. *Bagley v. Gilbert*, 63 Idaho 494, 122 P.2d 227 (1942).

Statute of Limitations.

Though this section and § 21 of the Admission Bill continued in force territorial statutes not repugnant to the Constitution, it is doubtful that statutes of limitations thus continued applied to causes of action which did not then exist; however, if that be conceded, they would not apply to state's suit to foreclose mortgage securing loan of school endowment funds, as trustee. *State v. Peterson*, 61 Idaho 50, 97 P.2d 603 (1939).

Territorial Legislation.

Territorial legislature did not exceed its authority in vesting concurrent jurisdiction in district courts in commitment of "persons so far disordered in mind as to endanger health, person, or property." *Ex parte Hinkle*, 33 Idaho 605, 196 P. 1035 (1921).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1944.

§ 3. Territorial fines and forfeitures accrue to state. — All fines, penalties, forfeitures, and escheats accruing to the territory of Idaho shall accrue to the use of the state.

Collateral References. Discussion of this section in constitutional convention. Consti-

tutional Convention Proceedings, Vol. II, p. 1944.

§ 4. Territorial bonds and obligations pass to state. — All recognizances, bonds, obligations, or other undertakings heretofore taken, or which may be taken before the organization of the judicial department under this Constitution, shall remain valid, and shall pass over to and may be prosecuted in the name of the state; and all bonds, obligations, or other undertakings executed by this territory, or to any other officer in his official capacity, shall pass over to the proper state authority, and to their successors in office for the uses therein respectively expressed, and may be sued for and recovered accordingly. All criminal prosecutions and penal actions which have arisen or which may arise before the organization of the judicial department under this Constitution, and which shall then be pending, may be prosecuted to judgment and execution in the name of the state.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1944.

§ 5. Territorial officers to continue in office. — All officers, civil and military, now holding their offices and appointments in this territory under the authority of the United States, or under the authority of this territory, shall continue to hold and exercise their respective offices and appointments until suspended under this Constitution.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 1944.

§ 6. Submission of Constitution to electors. — This Constitution shall be submitted for adoption or rejection, to a vote of the electors qualified by the laws of this territory to vote at all elections, at an election to be held on the Tuesday after the first Monday in November, A. D. 1889. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general election, and the returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general elections, and abstracts of such returns duly certified shall be transmitted to the board of canvassers now provided by law for canvassing the returns of votes for delegate in congress. The said canvassing board shall canvass the votes so returned, and certify and declare the result of said election in the same manner, as is required by law for the election of said delegate.

At the said election the ballots shall be in the following form: For the Constitution: Yes. No.

And as a heading to each of said ballots shall be printed on each ballot, the following instructions to voters:

All persons who desire to vote for the Constitution, or any of the articles submitted to a separate vote, may erase the word "no."

All persons who desire to vote against the Constitution, or against any article submitted separately may erase the word "yes."

Any person may have printed or written on his ballot only the words, "For the Constitution," or "Against the Constitution," and such ballots shall be counted for or against the Constitution accordingly.

General Election Defined.

Use made of the words "general election" in this section indicates very clearly that such words are used with reference to general elections held for the purpose of electing state and county officers. *Kessler v. Fritchman*, 21 Idaho 30, 119 P. 692 (1911).

In the adoption of our Constitution and the organization of state government, the framers, by this provision, submitted it for adoption to the vote of a limited number of male

citizens designated as electors qualified by law to vote. The very organization of government implies, and carries with it, the necessity of limiting the vote in shaping its Constitution to certain persons defined as electors. *Fisher v. Masters*, 59 Idaho 366, 83 P.2d 212 (1938).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 1944, 1999.

§ 7. When Constitution takes effect. — This Constitution shall take effect and be in full force immediately upon the admission of the territory as a state.

Collateral References. Discussion of this section in constitutional convention. Consti-

tutional Convention Proceedings, Vol. II, pp. 1946, 2000.

§ 8. Election proclamation to be issued. — Immediately upon the admission of the territory as a state, the governor of the territory, or in case of his absence or failure to act, the secretary of the territory, or in case of his absence or failure to act, the president of this convention, shall issue a proclamation, which shall be published, and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election by the people of all state, district, county, township, and other officers, created and made elective by this Constitution, and fixing a day for such election, which shall not be less than forty (40) days after the date of such proclamation, nor more than ninety (90) days after the admission of the territory as a state.

Cited in: Doan v. Board of County Comm'rs, 3 Idaho 38, 26 P. 167 (1891).

section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 2006.

Collateral References. Discussion of this

§ 9. Election to be ordered — Conduct of election. — The board of commissioners of the several counties shall thereupon order such election for said day, and shall cause notice thereof to be given, in the manner and for the length of time provided by the laws of the territory in cases of general elections for delegate to congress, and county and other officers. Every qualified elector of the territory, at the date of said election, shall be entitled to vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general elections, and the returns thereof shall be made and canvassed in the same manner and by the same authority as provided in cases of such general election; but returns for all state and district officers and members of the legislature, shall be made to the canvassing board hereinafter provided for.

General Election Defined.

Use made of the words "general election" in this section indicates very clearly that such words are used with reference to general elections held for the purpose of electing state and county officers. Kessler v. Fritchman, 21 Idaho 30, 119 P. 692 (1911).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 2009.

§ 10. Canvass of election returns. — The governor, secretary, controller and attorney general of the territory, and the president of this convention, or a majority of them, shall constitute a board of canvassers to canvass the vote at such elections for all state and district officers and members of the legislature. The said board shall assemble at the seat of government of the territory on the thirtieth day after the date of such election (or on the following day if such day fall on Sunday) and proceed to canvass the votes for all state and district officers and members of the legislature, in the manner provided by the laws of the territory for canvassing the vote for delegates to congress, and they shall issue certificates of election to the persons found to be elected to said offices severally,

and shall make and file with the secretary of the territory an abstract certified by them, of the number of votes cast for each person for each of said offices and the total number of votes cast in each county.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 2009.

§ 11. Certificates of election. — The canvassing boards of the several counties shall issue certificates of election to the several persons found by them to have been elected to the several county and precinct offices.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 2009.

§ 12. Qualifications of officers. — All officers elected at such election shall, within thirty days after they have been declared elected, take the oath required by this Constitution and give the same bond required by the law of the territory to be given in case of like officers of the territory, district or county, and shall thereupon enter upon the duties of their respective offices; but the legislature may require by law all such officers to give other or further bonds as a condition of their continuance in office.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 2010.

§ 13. Tenure of office. — All officers elected at said election, shall hold their offices until the legislature shall provide by law, in accordance with this Constitution, for the election of their successors, and until such successors shall be elected and qualified.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 2010.

§ 14. Convention of first legislature. — The governor-elect of the state, immediately upon his qualifying and entering upon the duties of his office, shall issue his proclamation convening the legislature of the state at the seat of government on a day to be named in said proclamation and which shall not be less than thirty (30) nor more than sixty (60) days after the date of such proclamation. Within ten (10) days after the organization of the legislature, both houses of the legislature shall then and there proceed to elect, as provided by law, two (2) senators of the United States for the state of Idaho. At said election, the two (2) persons who shall receive the majority of all votes cast by said senators and representatives, shall be elected as such United States senators, and shall be so declared by the presiding officers of said joint session. The presiding officers of the senate and house, shall issue a certificate to each of said senators, certifying his election, which certificates shall also be signed by the governor and attested by the secretary of state.

Cited in: Goodnight v. Moody, 3 Idaho 7, 26 P. 121 (1891).

Collateral References. Discussion of this section in constitutional convention. Consti-

tutional Convention Proceedings, Vol. II, pp. 2011, 2016, 2025.

§ 15. Legislature to pass necessary laws. — The legislature shall pass all necessary laws to carry into effect the provisions of this Constitution.

Cited in: R.E.W. Constr. Co. v. District Court, 88 Idaho 426, 400 P.2d 390 (1963).

Collateral References. Discussion of this

section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 2011.

§ 16. Transfer of cases to state courts. — Whenever any two (2) of the judges of the Supreme Court of the state, elected under the provisions of this Constitution, shall have qualified in their offices, the causes then pending in the Supreme Court of the territory, and the papers, records, and proceedings of said court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the Supreme Court of the state; and until so superceded the Supreme Court of the territory and the judges thereof shall continue, with like powers and jurisdiction, as if this Constitution had not been adopted. Whenever the judge of the district court of any district elected under the provisions of this Constitution shall have qualified in office, the several causes then pending in the district court of the territory, within any county in such district, and the records, papers, and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the district court of the state for such county; and until the district courts of this territory shall be superseded in the manner aforesaid the said district courts and the judges thereof shall continue with the same jurisdiction and power to be exercised in the same judicial districts respectively, as heretofore constituted under the laws of the territory.

Collateral References. Discussion of this section in constitutional convention. Consti-

tutional Convention Proceedings, Vol. II, p. 2011.

§ 17. Seals of courts. — Until otherwise provided by law, the seals now in use in the Supreme and district courts of this territory are hereby declared to be the seals of the Supreme and district courts, respectively, of the state.

Collateral References. Discussion of this section in constitutional convention. Consti-

tutional Convention Proceedings, Vol. II, p. 2011.

§ 18. Transfer of probate matters. — Whenever this Constitution shall go into effect, the books, records, and papers, and proceedings of the probate court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the jurisdiction and possession of the probate court of the same county of the state, and the said probate court shall proceed to final decree or judgment, order, or other determination in the said several matters and causes as the said probate court might have done as if this Constitution had not been adopted.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 2013.

§ 19. Religious freedom guaranteed — Disclaimer of title to Indian lands. — It is ordained by the state of Idaho that perfect toleration of religious sentiment shall be secured, and no inhabitant of said state shall ever be molested in person or property on account of his or her mode of religious worship. And the people of the state of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indians or Indian tribes; and until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States, residing without the said state of Idaho, shall never be taxed at a higher rate than the lands belonging to the residents thereof. That no taxes shall be imposed by the state on the lands or property therein belonging to, or which may hereafter be purchased by, the United States, or reserved for its use. And the debts and liabilities of this territory shall be assumed and paid by the state of Idaho. That this ordinance shall be irrevocable, without the consent of the United States and the people of the state of Idaho.

Cross ref. Guaranty of religious liberty, Const., art. 1, § 4.

Cited in: *Idaho v. United States*, 533 U.S. 262, 121 S. Ct. 2135, 150 L. Ed. 2d 326 (2001).

ANALYSIS

Hunting rights of Indians.
Indian lands.

—Submerged lands.

Religious liberty.

Taxation of possessory interests.

Taxation of unpatented land.

Taxing federal land.

Hunting Rights of Indians.

The Organic Act, §§ 1 and 17, and this section of state Constitution recognize the rights of Nez Perce Indians to hunt upon "open and unclaimed land" reserved by the Indians in the Treaty with the United States in 1855. *State v. Arthur*, 74 Idaho 251, 261 P.2d 135 (1953), cert. denied, 347 U.S. 937, 74 S. Ct. 627, 98 L. Ed. 1087 (1954).

A Nez Perce Indian could not be prosecuted by the state for killing a deer out of season in National Forest within the boundaries of lands ceded by Indians to United States under Treaty of 1855 although outside the reservation, since reservation in the treaty by the Indians to hunt upon "open and unclaimed lands" still exists, hence Indians are entitled to hunt at any time of the year in any of the lands ceded to the United States. *State v. Arthur*, 74 Idaho 251, 261 P.2d 135 (1953),

cert. denied, 347 U.S. 937, 74 S. Ct. 627, 98 L. Ed. 1087 (1954).

Indian Lands.

While decided prior to the adoption of the Constitution, the following line of cases dealing with the conflict of jurisdiction between the territory and the United States may assist in interpreting the provision concerning Indian lands. *Harkness v. Hyde*, 98 U.S. (8 Otto) 476, 25 L. Ed. 237 (1879); *Langford v. Monteith*, 102 U.S. 145, 26 L. Ed. 53 (1880); *Utah & N. Ry. v. Fisher*, 116 U.S. 28, 6 S. Ct. 246, 29 L. Ed. 542 (1885); *Idaho v. United States*, 533 U.S. 262, 121 S. Ct. 2135, 150 L. Ed. 2d 326 (2001).

The Fort Hall Indian reservation is subject to the general jurisdiction of Idaho as to all matters not interfering with the rights secured to the Indians by treaty. *Utah & N. Ry. v. Fisher*, 116 U.S. 28, 6 S. Ct. 246, 29 L. Ed. 542 (1885).

The sale of cigarettes on Indian lands by an Indian is not taxable as the State does not have the power to levy such a tax. *Mahoney v. State Tax Comm'n*, 96 Idaho 59, 524 P.2d 187 (1973), cert. denied, 419 U.S. 1089, 95 S. Ct. 679, 42 L. Ed. 2d 681 (1974).

Fact that prior to enactment of § 67-5101 there had been no amendment of art. 21, § 19 of the Idaho Constitution did not render § 67-5101 invalid. *State v. Marek*, 112 Idaho 860, 736 P.2d 1314 (1987).

While the Constitution may have provided

for congressional control and jurisdiction over Indian lands, it did not, and could not, prohibit the ceding of part or all of such control and jurisdiction back to the states. Such ceding of partial jurisdiction and control was accomplished by the Congress if the state would consent to accept such jurisdiction and control by legislative enactment. *State v. Marek*, 112 Idaho 860, 736 P.2d 1314 (1987).

State did not waive its immunity from suit by Indian tribes by adopting this section which disclaims any interest in any Indian lands in the state. *Coeur D'Alene Tribe v. Idaho*, 42 F.3d 1244 (9th Cir. 1994), rev'd on other grounds, 521 U.S. 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997).

State did not waive its immunity from Indian land claims by agreeing in its constitution, this section, that Congress had absolute jurisdiction and control over Indian lands, and that Congress exercised that control by granting tribes the right to sue the state in federal court pursuant to 28 U.S.C. § 1362. Such argument is foreclosed by the Supreme Court's holding in *Blatchford v. Native Village of Noatak*, 501 U.S. 775, 111 S. Ct. 2578, 115 L. Ed. 2d 686 (1991), where the Supreme Court rejected the argument that Congress had delegated to the tribes the federal government's exemption from state sovereign immunity by enacting 28 U.S.C. § 1362. If the State waived its immunity from suit through its constitution by recognizing that Congress alone has jurisdiction over Indian lands, the waiver was in favor of the United States only. *Coeur D'Alene Tribe v. Idaho*, 42 F.3d 1244 (9th Cir. 1994), rev'd on other grounds, 521 U.S. 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997).

—Submerged Lands.

Congress's course of conduct in first ascertaining that in 1888 the Executive construed the reservation to include submerged lands, and then authorizing negotiations in 1889 to purchase and thereby recover whatever portion of those lands the Tribe was willing to sell, demonstrated its acknowledgment that beneficial ownership of the lands had passed to the Tribe. *United States v. Coeur d'Alene Tribe*, 210 F.3d 1067 (9th Cir. 2000), aff'd, sub nom. *Idaho v. United States*, 533 U.S. 262, 121 S. Ct. 2135, 150 L. Ed. 2d 326 (2001).

Religious Liberty.

The Constitution of Idaho guarantees to each inhabitant of the state the inalienable right to decide for himself the wisdom and righteousness of his mode of worship. *State v. Morris*, 28 Idaho 599, 155 P. 296, 1916D L.R.A. 573 (1916).

To hold that the use of a moving picture machine on Sunday for purpose of illustrating a sermon or religious lecture is keeping open or operating a moving picture show in viola-

tion of the statute would be a construction of the statute which would bring it into conflict with this section. *State v. Morris*, 28 Idaho 599, 155 P. 296, 1916D L.R.A. 573 (1916).

Wife's criticism and ridicule of husband's religion, constituted a constitutionally protected free exercise of religious belief; however, constitutionally protected acts can create grounds for divorce. *Lepel v. Lepel*, 93 Idaho 82, 456 P.2d 249 (1969).

Taxation of Possessory Interests.

Where land in Idaho owned by the United States government in trust for certain Indian allottees was leased by the United States to plaintiff for 25 years with an option to renew for an additional 25 years, and plaintiff built a potato storage warehouse on the land with a useful life of 50 to 75 years with the ownership of the warehouse, by the terms of the lease, to be in the United States, but the use thereof to belong to plaintiff for the duration of the lease; plaintiff was not obliged to pay Idaho ad valorem taxes on the warehouse since it was owned by the United States, and therefore exempt from such taxation, and no Idaho statute provided for taxation of plaintiff's possessory interest in the premises. (In 1969 I. C. § 63-1223 was amended to provide for taxation of such possessory interests.) *Russet Potato Co. v. Board of Equalization*, 93 Idaho 501, 465 P.2d 625 (1970).

Taxation of Unpatented Land.

As soon as final certificate issues, entryman has the whole beneficial interest in land, and it may be taxed. *Indian Cove Irrigation Dist. v. Prideaux*, 25 Idaho 112, 136 P. 618, 1916A Ann. Cas. 1218 (1913).

Taxing Federal Land.

This section and art. 7, § 4 exempts property of the United States from taxation. This exemption extends to land condemned and purchased by the government for a townsite to replace a town flooded by a federal project dam. *United States v. Power County*, 21 F. Supp. 684 (D. Idaho 1937).

Federal immunity from taxation rests upon the sovereign right of the federal government to hold property tax free and it includes freedom from all taxation as a charge against property when the United States acquires it. *United States v. Power County*, 21 F. Supp. 684 (D. Idaho 1937).

Opinions of Attorney General. The disclaimer clause's prohibition on taxation of lands owned by the United States or reserved for its use has no application to ad valorem taxation of fee patented lands, since by issuing a fee patent to lands, the United States disclaims all interests in such lands and lands within the boundaries of an Indian Reservation, owned by Indians, are subject to ad valorem taxation by county governments, un-

less such lands are held in trust by the federal government or otherwise subject to restrictions on alienation. OAG 96-2.

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, pp. 2014, 2022.

16A Am. Jur. 2d, Constitutional Law, §§ 464 — 495.

16A C.J.S., Constitutional Law, §§ 513-517, 522.

Public regulation and prohibition of broadcasts in streets and other public places as infringement of religious freedom. 10 A.L.R.2d 627.

Oath of allegiance, governmental requirement of. 18 A.L.R.2d 309.

Statute, ordinance, or other measure involving chemical treatment of public water supply as interference with religious freedom. 43 A.L.R.2d 453.

Violation of constitutional guaranty of religious freedom by permitting challenge for cause of prospective jurors having convictions against capital punishment. 48 A.L.R.2d 568.

Constitutional protection of religious freedom as violated by zoning regulations. 74 A.L.R.2d 409.

Power of courts or other public agencies, in the absence of statutory authority, to order compulsory medical care for adult. 9 A.L.R.3d 1391.

Free exercise of religion as defense to prosecution for narcotic or psychedelic drug offense. 35 A.L.R.3d 939.

Erection, maintenance, or display of religious structures or symbols on public property as violation of religious freedom. 36 A.L.R.3d 1256.

Beliefs regarding capital punishment as disqualifying juror in capital case — Post-Witherspoon cases. 39 A.L.R.3d 550.

Right of clergyman in court as professional attorney to be in clerical garb. 84 A.L.R.3d 1143.

Power of court or other public agency to order medical treatment over parental religious objections for child whose life is not immediately endangered. 21 A.L.R.5th 248.

§ 20. Adoption of federal Constitution. — That in behalf of the people of Idaho we, in convention assembled, do adopt the Constitution of the United States.

Effect.

This section does not impose upon the state all the provisions of the federal Constitution. Rankin v. Jauman, 4 Idaho 53, 36 P. 502 (1894).

Collateral References. Discussion of this section in constitutional convention. Constitutional Convention Proceedings, Vol. II, p. 2024.

Signatures. — Done in open convention at Boise City, in the territory of Idaho, this sixth day of August, in the year of our Lord, one thousand eight hundred and eighty-nine.

Wm. H. Clagett, President.
Geo. Ainslie,
W. C. B. Allen,
Robt. Anderson,
H. Armstrong,
Orlando B. Batten,
Frank W. Beane,
Jas. H. Beatty,
J. W. Ballentine,
A. D. Bevan,
Henry B. Blake,
Frederick Campbell,
Frank P. Cavanah,
A. S. Chaney,
Chas. A. Clark,
I. N. Coston,

Jas. I. Crutcher,
Stephen S. Glidden,
John S. Gray,
Wm. W. Hammell,
H. S. Hampton,
H. O. Harkness,
Frank Harris,
Sol. Hasbrouck,
C. M. Hays,
W. B. Heyburn,
John Hogan,
J. M. Howe,
E. S. Jewell,
G. W. King,
H. B. Kinport,
Jas. W. Lamoreaux,

John Lewis,
Wm. C. Maxey,
A. E. Mayhew,
W. J. McConnell,
Henry Melder,
John H. Myer,
John T. Morgan,
A. B. Moss,
Aaron F. Parker,
A. J. Pierce,
A. J. Pinkham,
J. W. Poe,
Thos. Pyeatt,
Jas. W. Reid,
W. D. Robbins,
Wm. H. Savidge,

Aug. M. Sinnott,
James M. Shoup,
Drew W. Standrod,
Frank Steunenberg,
Homer Stull,
Willis Sweet,
Sam. F. Taylor,
J. L. Underwood
Lycurgus Vineyard,
J. S. Whitton,
Edgar Wilson,
W. W. Woods,
John Lemp,
N. I. Andrews,
Samuel J. Pritchard,
J. W. Brigham.

CONSTITUTIONAL AMENDMENTS
STATE OF IDAHO

AMENDMENT NO. 1, Article XVIII, Sec. 6

Proposed 1893, SL page 224, substitute for HJR 3 & 4; ratified November 6, 1894.

AMENDMENT NO. 2, Article VI, Sec. 2

Proposed 1895, SL page 232, SJR 2; ratified November 3, 1896.

AMENDMENT NO. 3, Article V, Sec. 18

Proposed 1895, SL page 236, SJR 5; ratified November 3, 1896.

AMENDMENT NO. 4, Article XVIII, Sec. 6

Proposed 1895, SL page 237, HJR 10; ratified November 3, 1896.

AMENDMENT NO. 5, Article XVIII, Sec. 4

Proposed 1897, SL page 183, HJR 8; ratified November 8, 1898.

AMENDMENT NO. 6, Article XVIII, Secs. 7 & 9

Proposed 1897, SL page 185, HJR 10; ratified November 8, 1898, two questions, both ratified.

AMENDMENT NO. 7, Article IX, Sec. 11

Proposed 1899, SL page 330, SJR 12; ratified November 6, 1900.

AMENDMENT NO. 8, Article XIII, Sec. 2

Proposed 1901, SL page 311, HJR 2; ratified November 4, 1902.

AMENDMENT NO. 9, Article VII, Sec. 9

Proposed 1905, SL page 441, SJR 6; ratified November 6, 1906.

AMENDMENT NO. 10, Article XVIII, Sec. 6

Proposed 1907, SL page 585, HJR 10; ratified November 3, 1908.

AMENDMENT NO. 11, Article XVIII, Sec. 6

Proposed 1909, SL page 439, SJR 6; ratified November 8, 1910, three separate questions, all ratified.

AMENDMENT NO. 12, Article V, Sec. 6

Proposed 1909, SL page 441, SJR 7; ratified November 8, 1910.

AMENDMENT NO. 13, Article VIII, Sec. 1

Proposed 1909, SL page 447, HJR 3; ratified November 8, 1910.

AMENDMENT NO. 14, Article IX, Sec. 7

Proposed 1909, SL page 457, HJR 15; ratified November 8, 1910.

AMENDMENT NO. 15, Article III, Sec. 1

Proposed 1911, SL page 785, SJR 12; ratified November 5, 1912.

AMENDMENT NO. 16, Article III, Sec. 1

Proposed 1911, SL page 786, SJR 13; ratified November 5, 1912.

AMENDMENT NO. 17, Article VIII, Sec. 1

Proposed 1911, SL page 787, SJR 16; ratified November 5, 1912.

AMENDMENT NO. 18, Article III, Sec. 2

Proposed 1911, SL page 788, HJR 13; ratified November 5, 1912.

AMENDMENT NO. 19, Article VI, Sec. 6 ADDED

Proposed 1911, SL page 790, HJR 19; ratified November 5, 1912.

AMENDMENT NO. 20, Article XIII, Sec. 3 REPEALED

Proposed 1911, SL page 792, HJR 24; ratified November 5, 1912.

AMENDMENT NO. 21, Article IX, Sec. 2

Proposed 1911, SL page 791, HJR 30; ratified November 5, 1912.

AMENDMENT NO. 22, Article XVIII, Sec. 6

Proposed 1912 (Special Session), SL page 53, SJR 1; ratified November 5, 1912, two separate questions, both ratified.

AMENDMENT NO. 23, Article III, Sec. 26 ADDED

Proposed 1915, SL page 395, SJR 1; ratified November 7, 1916.

AMENDMENT NO. 24, Article IX, Sec. 8

Proposed 1915, SL page 396, HJR 3; ratified November 7, 1916.

AMENDMENT NO. 25, Article V, Sec. 6

Proposed 1919, SL page 618, HJR 6; ratified November 2, 1920.

AMENDMENT NO. 26, Article V, Sec. 9

Proposed 1919, SL page 619, HJR 8; ratified November 2, 1920.

AMENDMENT NO. 27, Article VIII, Sec. 2

Proposed 1919, SL page 622, HJR 13; ratified November 2, 1920.

AMENDMENT NO. 28, Article IV, Sec. 19

Proposed 1927, SL page 586, HJR 3; ratified November 6, 1928.

AMENDMENT NO. 29, Article XVIII, Sec. 7

Proposed 1927, SL page 586, HJR 4; ratified November 6, 1928.

AMENDMENT NO. 30, Article V, Sec. 18

Proposed 1927, SL page 587, HJR 7; ratified November 6, 1928.

AMENDMENT NO. 31, Article IX, Sec. 11

Proposed 1927, SL page 589, HJR 10; ratified November 6, 1928.

AMENDMENT NO. 32, Article XVIII, Sec. 6

Proposed 1927, SL page 590, HJR 11; ratified November 6, 1928.

AMENDMENT NO. 33, Article XV, Sec. 3

Proposed 1927, SL page 591, HJR 13; ratified November 6, 1928.

AMENDMENT NO. 34, Article X, Sec. 6 REPEALED

Proposed 1929, SL page 693, HJR 5; ratified November 4, 1930.

AMENDMENT NO. 35, Article XVIII, Sec. 4a ADDED

Proposed 1931, SL page 460, SJR 3; ratified November 8, 1932.

AMENDMENT NO. 36, Article I, Sec. 20

Proposed 1931, SL page 462, HJR 2; ratified November 8, 1932.

AMENDMENT NO. 37, Article I, Sec. 7

Proposed 1933, SL page 468, SJR 1; ratified November 6, 1934.

AMENDMENT NO. 38, Article VI, Sec. 7 ADDED

Proposed 1933, SL page 469, SJR 2; ratified November 6, 1934.

AMENDMENT NO. 39, Article III, Sec. 26

Proposed 1933, SL page 470, SJR 5; ratified November 6, 1934.

AMENDMENT NO. 40, Article XVIII, Sec. 10

Proposed 1933, SL page 471, SJR 7; ratified November 6, 1934.

AMENDMENT NO. 41, Article V, Sec. 9

Proposed 1935, SL page 377, HJR 1; ratified November 3, 1936.

AMENDMENT NO. 42, Article IX, Sec. 8

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AMENDMENT NO. 61, Article V, Sec. 22

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AMENDMENT NO. 63, Article III, Sec. 27 ADDED

Proposed 1959, SL page 658, SJR 4; ratified November 8, 1960.

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AMENDMENT NO. 70, Article XV, Sec. 7 ADDED

Proposed 1964 (Extraordinary Session), 1965 SL page 22, SJR 1; ratified November 3, 1964.

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Proposed 1994, SL page 1498, HJR 16; ratified November 8, 1994.

AMENDMENT NO. 121, Article XVIII, Sec. 12 ADDED

Proposed 1994, SL page 1499, HJR 17 aaS; ratified November 8, 1994.

AMENDMENT NO. 122, Article IV, Sec. 1

Proposed 1994, SL page 1500, HJR 24; ratified November 8, 1994.

AMENDMENT NO. 123, Article VIII, Sec. 3C ADDED

Proposed 1996, SL page 1473, SJR 111; ratified November 5, 1996.

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AMENDMENT NO. 125, Article V, Sec. 27

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COURTS OF APPEALS

§ 1. **Number and composition of circuits.** — The thirteen judicial circuits of the United States are constituted as follows:

Circuits

District of Columbia

Composition

District of Columbia

First	Maine, Massachusetts, New Hampshire, Puerto Rico, Rhode Island.
Second	Connecticut, New York, Vermont.
Third	Delaware, New Jersey, Pennsylvania, Virgin Islands.
Fourth	Maryland, North Carolina, South Carolina, Virginia, West Virginia.
Fifth	District of the Canal Zone, Louisiana, Mississippi, Texas.
Sixth	Kentucky, Michigan, Ohio, Tennessee.
Seventh	Illinois, Indiana, Wisconsin.
Eighth	Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota.
Ninth	Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, Hawaii.
Tenth	Colorado, Kansas, New Mexico, Oklahoma, Utah, Wyoming.
Eleventh	Alabama, Florida, Georgia.
Federal	All Federal judicial districts. [June 25, 1948, ch. 646, § 1, 62 Stat. 870; Oct. 31, 1951, ch. 655, § 34, 65 Stat. 723; Oct. 14, 1980, P.L. 96-452, § 2, 94 Stat. 1994; April 2, 1982, P.L. 97-164, Title I, § 101, 96 Stat. 25; 28 U.S.C. § 41.]

Compiler's notes. Sections 1 to 31 inclusive, with the exception of § 22, are taken from Title 28 of the United States Judicial Code as revised and codified June 25, 1948, ch. 646, 62 Stat. 869. The law concerning removal of causes has been included in this chapter for the convenience of the Idaho law-

yers. A few other sections have been taken from the new Judicial Code where it seemed they might be useful.
The actual U.S.C. citation for each of the federal laws appearing in this section may be found at the end of the historical citation at the end of the section.

DISTRICT COURTS

§ 2. **Idaho.** — Idaho, exclusive of Yellowstone National Park, constitutes one judicial district.

Court shall be held at Boise, Coeur d'Alene, Moscow, and Pocatello. [June 25, 1948, ch. 646, § 92, 62 Stat. 877; June 2, 1970, P.L. 91-272, § 5, 84 Stat. 297; 28 U.S.C. § 92.]

§ 2A. **Appointment and number of district judges.** — The President shall appoint, by and with the advice and consent of the Senate, district judges for the several judicial districts, as follows:

Districts	Judges
Alabama: ***	
Idaho	2
Illinois ***	

[As amended June 2, 1970, P.L. 91-272, § 1(c), (d), 84 Stat. 294, 295; Dec. 18, 1971, P.L. 92-208, § 3(d), 85 Stat. 742; Oct. 2, 1978, P.L. 95-408, § 4(b)(2)-(4), as added P.L. 96-4, § 1, Mar. 30, 1979, 93 Stat. 6; Oct. 20, 1978, P.L. 95-486, § 1(c), 92 Stat. 1630; Jan. 14, 1983, P.L. 97-471, § 3, 96 Stat. 2601;

July 10, 1984, P.L. 98-353, Title II, § 202(e), 98 Stat. 348; Dec. 1, 1990, P.L. 101-650, Title II, § 203(d), Title III, § 303, 104 Stat. 5101, 5105; Oct. 6, 1997, P.L. 105-53, § 4, 111 Stat. 1174; Nov. 29, 1999, P.L. 106-113, Div B, § 1000(a)(1), 113 Stat. 1535; Dec. 21, 2000, P.L. 106-553, § 1(a)(2), 114 Stat. 2762; Nov. 2, 2002, P.L. 107-273, Div A, Title III, § 312(a)(2), (b)(2), 116 Stat. 1786, 1787; 28 U.S.C. § 133.]

SUPREME COURT

§ 3. State courts — Appeal — Certiorari. — (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term “highest court of a State” includes the District of Columbia Court of Appeals. [June 25, 1948, ch. 646, § 1, 62 Stat. 929; July 29, 1970, P.L. 91-358, Title 1, Part D, Subpart 2, § 172(a)(1), 84 Stat. 590; June 27, 1988, P.L. 100-352, § 3, 102 Stat. 662; 28 U.S.C. § 1257.]

DISTRICT COURTS—JURISDICTION

§ 4. Rate orders of State agencies. — The district courts shall not enjoin, suspend or restrain the operation of, or compliance with, any order affecting rates chargeable by a public utility and made by a State administrative agency or a rate-making body of a State political subdivision, where:

(1) Jurisdiction is based solely on diversity of citizenship or repugnance of the order to the Federal Constitution; and,

(2) The order does not interfere with interstate commerce; and,

(3) The order has been made after reasonable notice and hearing; and,

(4) A plain, speedy and efficient remedy may be had in the courts of such State. [June 25, 1948, ch. 646, § 1, 62 Stat. 932; 28 U.S.C. § 1342.]

§ 5. Bonds executed under federal law. — The district courts shall have original jurisdiction, concurrent with State courts, of any action on a bond executed under any law of the United States, except matters within the jurisdiction of the Court of International Trade under section 1582 of this title. [June 25, 1948, ch. 646, § 1, 62 Stat. 934; Oct. 10, 1980, P.L. 96-417, Title V, § 506, 94 Stat. 1743; 28 U.S.C. § 1352.]

§ 6. Land grants from different states. — The district courts shall have original jurisdiction of actions between citizens of the same state claiming lands under grants from different states. [June 25, 1948, ch. 646, § 1, 62 Stat. 934; 28 U.S.C. § 1354.]

DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

§ 7. Actions removable generally. — (a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e)(1) Notwithstanding the provisions of subsection (b) of this section, a defendant in a civil action in a State court may remove the action to the district court of the United States for the district and division embracing the place where the action is pending if —

(A) the action could have been brought in a United States district court under section 1369 of this title; or

(B) the defendant is a party to an action which is or could have been brought, in whole or in part, under section 1369 in a United States district court and arises from the same accident as the action in State court, even if the action to be removed could not have been brought in a district court as an original matter.

The removal of an action under this subsection shall be made in accordance with section 1446 of this title, except that a notice of removal may also be filed before trial of the action in State court within 30 days after the date on which the defendant first becomes a party to an action under section 1369 in a United States district court that arises from the same accident as the action in State court, or at a later time with leave of the district court.

(2) Whenever an action is removed under this subsection and the district court to which it is removed or transferred under section 1407(j) has made a liability determination requiring further proceedings as to damages, the district court shall remand the action to the State court from which it had

been removed for the determination of damages, unless the court finds that, for the convenience of parties and witnesses and in the interest of justice, the action should be retained for the determination of damages.

(3) Any remand under paragraph (2) shall not be effective until 60 days after the district court has issued an order determining liability and has certified its intention to remand the removed action for the determination of damages. An appeal with respect to the liability determination of the district court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the district court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination shall not be subject to further review by appeal or otherwise.

(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

(5) An action removed under this subsection shall be deemed to be an action under section 1369 and an action in which jurisdiction is based on section 1369 of this title for purposes of this section and sections 1407, 1697, and 1785 of this title.

(6) Nothing in this subsection shall restrict the authority of the district court to transfer or dismiss an action on the ground of inconvenient forum.

(f) The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which a civil action is removed did not have jurisdiction over that claim. [June 25, 1948, c. 646, § 1, 62 Stat. 937; amended Oct. 21, 1976, P.L. 94-583, § 6, 90 Stat. 2898; June 19, 1986, P.L. 99-336, § 3(a), 100 Stat. 637; Nov. 19, 1988, P.L. 100-702, Title X, § 1016(a), 102 Stat. 4669; Dec. 1, 1990, P.L. 101-650, Title III, § 312, 104 Stat. 5114; Dec. 9, 1991, P.L. 102-198, § 4, 105 Stat. 1623; Nov. 2, 2002, P.L. 107-273, Div. C, Title I, Subtitle A, § 11020(b)(3), 116 Stat. 1827; 28 U.S.C. § 1441.]

§ 8. Federal officers or agencies sued or prosecuted. — (a) A civil action or criminal prosecution commenced in a State court against any of the following may be removed by them to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) The United States or any agency thereof or any officer (or any person acting under that officer) of the United States or any agency thereof, sued in an official or individual capacity for any act under color of such office or on account of any right, title or authority claimed under any Act of Congress for the apprehension or punishment of criminals or the collection of the revenue.

(2) A property holder whose title is derived from any such officer, where such action or prosecution affects the validity of any law of the United States.

(3) Any officer of the courts of the United States, for any Act under color of office or in the performance of his duties;

(4) Any officer of either House of Congress, for any act in the discharge of his official duty under an order of such House.

(b) A personal action commenced in any State court by an alien against any citizen of a State who is, or at the time the alleged action accrued was,

a civil officer of the United States and is a nonresident of such State, wherein jurisdiction is obtained by the State court by personal service of process, may be removed by the defendant to the district court of the United States for the district and division in which the defendant was served with process. [June 25, 1948, ch. 646, § 1, 62 Stat. 938; amended Oct. 19, 1996, P.L. 104-317, Title II, § 206(a), 110 Stat. 3850; 28 U.S.C. § 1442.]

§ 8a. Members of armed forces sued or prosecuted. — A civil or criminal prosecution in a court of a state of the United States against a member of the armed forces of the United States on account of an act done under color of his office or status, or in respect to which he claims any right, title, or authority under a law of the United States respecting the armed forces thereof, or under the law of war may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States for the district where it is pending in the manner prescribed by law, and it shall thereupon be entered on the docket of the district court, which shall proceed as if the cause had been originally commenced therein and shall have full power to hear and determine the cause. [Aug. 10, 1956, ch. 1041, § 19(a), 70A Stat. 626; 28 U.S.C. § 1442a.]

§ 9. Civil rights cases. — Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law. [June 25, 1948, ch. 646, § 1, 62 Stat. 938; 28 U.S.C. § 1443.]

§ 10. Foreclosure action against United States. — Any action brought under section 2410 of this title against the United States in any state court may be removed by the United States to the district court of the United States for the district and division in which the action is pending. [June 25, 1948, ch. 646, § 1, 62 Stat. 938; May 24, 1949, ch. 139, § 82, 63 Stat. 101; 28 U.S.C. § 1444.]

§ 11. Nonremovable actions. — (a) A civil action in any State court against a railroad or its receivers or trustees, arising under sections 1-4 and 5-10 of the Act of April 22, 1908 (45 U.S.C. 51-54, 55-60), may not be removed to any district court of the United States.

(b) A civil action in any State court against a carrier or its receivers or trustees to recover damages for delay, loss, or injury of shipments, arising under section 11706 or 14706 of Title 49, may not be removed to any district court of the United States unless the matter in controversy exceeds \$10,000, exclusive of interest and costs.

(c) A civil action in any State court arising under the workmen's compensation laws of such State may not be removed to any district court of the United States.

(d) A civil action in any State court arising under section 40302 of the Violence Against Women Act of 1994 may not be removed to any district court of the United States. [June 25, 1948, ch. 646, § 1, 62 Stat. 939; July 25, 1958, P.L. 85-554, § 5, 72 Stat. 415; Oct. 17, 1978, P.L. 95-473, § 2(a)(3)(A), 92 Stat. 1465; Oct. 20, 1978, P.L. 95-486, § 9(b), 92 Stat. 1634; Sept. 13, 1994, P.L. 103-322, Title IV, Subtitle C, § 40302(e)(5), 108 Stat. 1942; Dec. 29, 1995, P.L. 104-88, Title III, Subtitle A, § 305(b), 109 Stat. 944; Oct. 11, 1996, P.L. 104-287, § 3, 110 Stat. 3388; 28 U.S.C. § 1445.]

§ 12. Procedure for removal. — (a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a notice of removal signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and containing a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon such defendant or defendants in such action.

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

(c)(1) A petition for removal of a criminal prosecution shall be filed not later than thirty days after the arraignment in the State court, or at any time before trial, whichever is earlier, except that for good cause shown the United States district court may enter an order granting the defendant or defendants leave to file the petition at a later time.

(2) A petition for removal of a criminal prosecution shall include all grounds for such removal. A failure to state grounds which exist at the time of the filing of the petition shall constitute a waiver of such grounds, and a second petition may be filed only on grounds not existing at the time of the original petition. For good cause shown, the United States district court may grant relief from the limitations of this paragraph.

(3) The filing of a petition for removal of a criminal prosecution shall not prevent the State court in which such prosecution is pending from proceeding further, except that a judgment of conviction shall not be entered unless the petition is first denied.

(4) The United States district court to which such petition is directed shall examine the petition promptly. If it clearly appears on the face of the petition and any exhibits annexed thereto that the petition for removal should not be granted, the court shall make an order for its summary dismissal.

(5) If the United States district court does not order the summary dismissal of such petition, it shall order an evidentiary hearing to be held promptly and after such hearing shall make such disposition of the petition as justice shall require. If the United States district court determines that such petition shall be granted, it shall so notify the State court in which prosecution is pending, which shall proceed no further.

(d) Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

(e) If the defendant or defendants are in actual custody on process issued by the State court, the district court shall issue its writ of habeas corpus, and the marshal shall thereupon take such defendant or defendants into his custody and deliver a copy of the writ to the clerk of such State court.

(f) With respect to any counterclaim removed to a district court pursuant to section 337(c) of the Tariff Act of 1930 [19 U.S.C. § 1337(c)], the district court shall resolve such counterclaim in the same manner as an original complaint under the Federal Rules of Civil Procedure, except that the payment of a filing fee shall not be required in such cases and the counterclaim shall relate back to the date of the original complaint in the proceeding before the International Trade Commission under section 337 of that Act [19 U.S.C. § 1337]. [June 25, 1948, ch. 646, § 1, 62 Stat. 939; May 24, 1949, ch. 139, § 83, 63 Stat. 101; Sept. 29, 1965, P.L. 89-215, 79 Stat. 887; July 30, 1977, P.L. 95-78, § 3, 91 Stat. 321; Nov. 19, 1988, P.L. 100-702, Title X, § 1016(b), 102 Stat. 4669; Dec. 9, 1991, P.L. 102-198, § 10(a), 105 Stat. 1626; Dec. 8, 1994, P.L. 103-465, Title III, Subtitle C, § 321(b)(2), 108 Stat. 4946; Oct. 19, 1996, P.L. 104-317, Title VI, § 603, 110 Stat. 3857; 28 U.S.C. § 1446.]

§ 13. Procedure after removal generally. — (a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise.

(b) It may require the removing party to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court.

(c) A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded. An order remanding the case may require payment of just costs and any actual expenses, including attorney fees,

incurred as a result of the removal. A certified copy of the order of remand shall be mailed by the clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

(e) If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court. [June 25, 1948, ch. 646, § 1, 62 Stat. 939; May 24, 1949, ch. 139, § 84, 63 Stat. 102; July 2, 1964, P.L. 88-352, Title IX, § 901, 78 Stat. 266; Nov. 19, 1988, P.L. 100-702, Title X, § 1016(c), 102 Stat. 4670; Dec. 9, 1991, P.L. 102-198, § 10(b), 105 Stat. 1626; Oct. 1, 1996, P.L. 104-219, § 1, 110 Stat. 3022; 28 U.S.C. § 1447.]

§ 14. Process after removal. — In all cases removed from any State court to any district court of the United States in which any one or more of the defendants has not been served with process or in which the service has not been perfected prior to removal, or in which process served proves to be defective, such process or service may be completed or new process issued in the same manner as in cases originally filed in such district court.

This section shall not deprive any defendant upon whom process is served after removal of his right to move to remand the case. [June 25, 1948, ch. 646, § 1, 62 Stat. 940; 28 U.S.C. § 1448.]

§ 15. State court record supplied. — Where a party is entitled to copies of the records and proceedings in any suit or prosecution in a State court, to be used in any district court of the United States, and the clerk of such State court, upon demand, and the payment or tender of the legal fees, fails to deliver certified copies, the district court may, on affidavit reciting such facts, direct such record to be supplied by affidavit or otherwise. Thereupon such proceedings, trial, and judgment may be had in such district court, and all such process awarded, as if certified copies had been filed in the district court. [June 25, 1948, ch. 646, § 1, 62 Stat. 940; May 24, 1949, ch. 139, § 85, 63 Stat. 102; 28 U.S.C. § 1449.]

§ 16. Attachment or sequestration; securities. — Whenever any action is removed from a State court to a district court of the United States, any attachment or sequestration of the goods or estate of the defendant in such action in the State court shall hold the goods or estate to answer the final judgment or decree in the same manner as they would have been held to answer final judgment or decree had it been rendered by the State court.

All bonds, undertakings, or security given by either party in such action prior to its removal shall remain valid and effectual notwithstanding such removal.

All injunctions, orders, and other proceedings had in such action prior to its removal shall remain in full force and effect until dissolved or modified

by the district court. [June 25, 1948, ch. 646, § 1, 62 Stat. 940; 28 U.S.C. § 1450.]

GENERAL PROVISIONS

§ 17. State laws as rules of decision. — The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply. [June 25, 1948, ch. 646, § 1, 62 Stat. 944; 28 U.S.C. § 1652.]

§ 18. State and Territorial statutes and judicial proceedings; full faith and credit. — The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. [June 25, 1948, ch. 646, § 1, 62 Stat. 947; 28 U.S.C. § 1738.]

§ 18A. Full faith and credit given to child custody determinations. — (a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term —

(1) “child” means a person under the age of eighteen;

(2) “contestant” means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) “custody determination” means a judgment, decree, or other order of a court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) “home State” means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any such persons are counted as part of the six-month or other period;

(5) “modification” and “modify” refer to a custody or visitation determination which modifies, replaces, supersedes, or otherwise is made subse-

quent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) “person acting as a parent” means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) “physical custody” means actual possession and control of a child;

(8) “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(9) “visitation determination” means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if —

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met:

(A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child’s home State within six months before the date of commencement of the proceeding and the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child’s present of future care, protection, training, and personal relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is an issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any

parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if —

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination. [Added Dec. 28, 1980, P.L. 96-611, § 8(a), 94 Stat. 3569; Nov. 12, 1998, P.L. 105-374, § 1, 112 Stat. 3383; Oct. 28, 2000, P.L. 106-386, Div. B, Title III, § 1303(d), 114 Stat. 1512; 28 U.S.C. § 1738A.]

§ 19. State and Territory nonjudicial records; full faith and credit. — All nonjudicial records or books kept in any public office of any State, Territory, or Possession of the United States, or copies thereof, shall be proved or admitted in any court or office in any other State, Territory, or Possession by the attestation of the custodian of such records or books, and the seal of his office annexed, if there be a seal, together with a certificate of a judge of a court of record of the county, parish, or district in which such office may be kept, or of the Governor, or secretary of state, the chancellor or keeper of the great seal, of the State, Territory, or Possession that the said attestation is in due form and by the proper officers.

If the certificate is given by a judge, it shall be further authenticated by the clerk or prothonotary of the court, who shall certify, under his hand and the seal of his office, that such judge is duly commissioned and qualified; or, if given by such Governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or Possession in which it is made.

Such records or books, or copies thereof, so authenticated, shall have the same full faith and credit in every court and office within the United States and its Territories and Possessions as they have by law or usage in the courts or offices of the State, Territory, or Possession from which they are taken. [June 25, 1948, ch. 646, § 1, 62 Stat. 947; 28 U.S.C. § 1739.]

§ 20. Foreign documents, generally. — An official record or document of a foreign country may be evidenced by a copy, summary, or excerpt authenticated as provided in the Federal Rules of Civil Procedure. [June 25, 1948, ch. 646, § 1, 62 Stat. 948; May 24, 1949, ch. 139, § 92(b), 63 Stat. 103; Oct. 3, 1964, P.L. 88-619, § 5(a), 78 Stat. 996; 28 U.S.C. § 1741.]

§ 21. Land titles; foreign records. [Repealed.]

Compiler's notes. This section (28 U.S.C. 646, § 1, 62 Stat. 948, was repealed by Act § 1742), comprising Act June 25, 1948, ch. Oct. 3, 1964, P.L. 88-619, § 6(a), 78 Stat. 996.

§ 22. Proof of official record. — (a) Authentication.

(1) Domestic. — An official record kept within the United States, or any state, district, commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) Foreign. — A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the attesting person, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (i) admit an attested copy without final certification or (ii) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subdivision (a)(1) of this rule in the case of a domestic record, or complying with the requirements of subdivision (a)(2) of this rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This rule does not prevent the proof of official records or of entry or lack of entry therein by any other method authorized by law. [As amended effective July 1, 1966; as amended March 2, 1987, effective August 1, 1987; as amended April 30, 1991, effective December 1, 1991; Rule 44 of the Rules of Civil Procedure.]

WITNESSES

§ 23. Per diem and mileage generally — Subsistence. — (a)(1) Except as otherwise provided by law, a witness in attendance at any court of the United States, or before a United States Magistrate [United States Magistrate Judge], or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall be paid the fees and allowances provided by this section.

(2) As used in this section, the term “court of the United States” includes, in addition to the courts listed in section 451 of this title, any court created by Act of Congress in a territory which is invested with any jurisdiction of a district court of the United States.

(b) A witness shall be paid an attendance fee of \$40 per day for each day’s attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance at the beginning and end of such attendance or at any time during such attendance.

(c)(1) A witness who travels by common carrier shall be paid for the actual expenses of travel on the basis of the means of transportation reasonably utilized and the distance necessarily traveled to and from such witness’s residence by the shortest practical route in going to and returning from the place of attendance. Such a witness shall utilize a common carrier at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

(2) A travel allowance equal to the mileage allowance which the Administrator of General Services has prescribed, pursuant to section 5704 of title 5, for official travel of employees of the Federal Government shall be paid to each witness who travels by privately owned vehicle. Computation of mileage under this paragraph shall be made on the basis of a uniformed table of distances adopted by the Administrator of General Services.

(3) Toll charges for toll roads, bridges, tunnels, and ferries, taxicab fares between places of lodging and carrier terminals, and parking fees (upon presentation of a valid parking receipt), shall be paid in full to a witness incurring such expenses.

(4) All normal travel expenses within and outside the judicial district shall be taxable as costs pursuant to section 1920 of this title.

(d)(1) A subsistence allowance shall be paid to a witness (other than a witness who is incarcerated) when an overnight stay is required at the place of attendance because such place is so far removed from the residence of such witness as to prohibit return thereto from day to day.

(2) A subsistence allowance for a witness shall be paid in an amount not to exceed the maximum per diem allowance prescribed by the Administrator of General Services, pursuant to section 5702(a) of title 5, for official travel in the area of attendance by employees of the Federal Government.

(3) A subsistence allowance for a witness attending in an area designated by the Administrator of General Services as a high-cost area shall be paid in an amount not to exceed the maximum actual subsistence allowance prescribed by the Administrator, pursuant to section 5702(c)(B) of title 5, for official travel in such area by employees of the Federal Government.

(4) When a witness is detained pursuant to section 3149 of title 18 for want of security for his appearance, he shall be entitled for each day of detention when not in attendance at court, in addition to his subsistence, to the daily attendance fee provided by subsection (b) of this section.

(e) An alien who has been paroled into the United States for prosecution, pursuant to section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)), or an alien who either has admitted belonging to a class of aliens who are deportable or has been determined pursuant to section 240 of such Act (8 U.S.C. 1252(b)) to be deportable, shall be ineligible to receive the fees or allowances provided by this section. [June 25, 1948, ch. 646, § 1, 62 Stat. 950; May 10, 1949, ch. 96, 63 Stat. 65; May 24, 1949, ch. 139, § 94, 63 Stat. 103; Oct. 31, 1951, ch. 655, § 51(a), 65 Stat. 727; Sept. 3, 1954, ch. 1263, § 45, 68 Stat. 1242; Aug. 1, 1956, ch. 826, 70 Stat. 798; Mar. 27, 1968, P.L. 90-274, § 102(b), 82 Stat. 62; Oct. 27, 1978, P.L. 95-535, § 1, 92 Stat. 2033; Dec. 1, 1990, P.L. 101-650, Title III, § 314(a), 104 Stat. 5115; Oct. 14, 1992, P.L. 102-417, § 2(a)-(c), 106 Stat. 2138; Sept. 30, 1996, P.L. 104-208, Div. C, Title III, Subtitle A, § 308(g)(5)(E), 110 Stat. 3009-623; 28 U.S.C. § 1821.]

JURIES

§ 24. **Fees.** — (a) Grand and petit jurors in district courts appearing pursuant to this chapter shall be paid the fees and allowances provided by this section. The requisite fees and allowances shall be disbursed on the certificate of the clerk of court in accordance with the procedure established by the Director of the Administrative Office of the United States Courts. Attendance fees for extended service under subsection (b) of this section shall be certified by the clerk only upon the order of a district judge.

(b)(1) A juror shall be paid an attendance fee of \$40 per day for actual attendance at the place of trial or hearing. A juror shall also be paid the attendance fee for the time necessarily occupied in going to and returning from such place at the beginning and end of such service or at any time during such service.

(2) A petit juror required to attend more than thirty days in hearing one case may be paid, in the discretion of the trial judge, an additional fee, not exceeding \$10 more than the attendance fee, for each day in excess of thirty days on which he is required to hear such case.

(3) A grand juror required to attend more than forty-five days of actual service may be paid, in the discretion of the district judge in charge of the particular grand jury, an additional fee, not exceeding \$10 more than the attendance fee, for each day in excess of forty-five days of actual service.

(4) A grand or petit juror required to attend more than ten days of actual service may be paid, in the discretion of the judge, the appropriate fees at the end of the first ten days and at the end of every ten days of service thereafter.

(5) Certification of additional attendance fees may be ordered by the judge to be made effective commencing on the first day of extended service, without reference to the date of such certification.

(c)(1) A travel allowance not to exceed the maximum rate per mile that the Director of the Administrative Office of the United States Courts has prescribed pursuant to section 604(a)(7) of this title for payment to supporting court personnel in travel status using privately owned automobiles shall be paid to each juror, regardless of the mode of transportation actually employed. The prescribed rate shall be paid for the distance necessarily traveled to and from a juror's residence by the shortest practical route in going to and returning from the place of service. Actual mileage in full at the prescribed rate is payable at the beginning and at the end of a juror's term of service.

(2) The Director shall promulgate rules regulating interim travel allowances to jurors. Distances traveled to and from court should coincide with the shortest practical route.

(3) Toll charges for toll roads, bridges, tunnels, and ferries shall be paid in full to the juror incurring such charges. In the discretion of the court, reasonable parking fees may be paid to the juror incurring such fees upon representation of a valid parking receipt. Parking fees shall not be included in any tabulation of mileage cost allowances.

(4) Any juror who travels to district court pursuant to summons in an area outside of the contiguous forty-eight States of the United States shall be paid the travel expenses provided under this section, or actual reasonable transportation expenses subject to the discretion of the district judge or clerk of court as circumstances indicate, exercising due regard for the mode of transportation, the availability of alternative modes, and the shortest practical route between residence and court.

(5) A grand juror who travels to district court pursuant to a summons may be paid the travel expenses provided under this section or, under guidelines established by the Judicial Conference, the actual reasonable costs of travel by aircraft when travel by other means is not feasible and when certified by the chief judge of the district court in which the grand juror serves.

(d)(1) A subsistence allowance covering meals and lodging of jurors shall be established from time to time by the Director of the Administrative Office of the United States Courts pursuant to section 604(a)(7) of this title, except that such allowance shall not exceed the allowance for supporting court personnel in travel status in the same geographical area. Claims for such allowance shall not require itemization.

(2) A subsistence allowance shall be paid to a juror when an overnight stay is required at the place of holding court, and for the time necessarily spent in traveling to and from the place of attendance if an overnight stay is required.

(3) A subsistence allowance for jurors serving in district courts outside of the contiguous forty-eight States of the United States shall be allowed at a rate not to exceed that per diem allowance which is paid to supporting court personnel in travel status in those areas where the Director of the Administrative Office of the United States Courts has prescribed an increased per diem fee pursuant to section 604(a)(7) of this title.

(e) During any period in which a jury is ordered to be kept together and not to separate, the actual cost of subsistence shall be paid upon the order

of the court in lieu of the subsistence allowances payable under subsection (d) of this section. Such allowance for the jurors ordered to be kept separate or sequestered shall include the cost of meals, lodging, and other expenditures ordered in the discretion of the court for their convenience and comfort.

(f) A juror who must necessarily use public transportation in traveling to and from court, the full cost of which is not met by the transportation expenses allowable under subsection (c) of this section on account of the short distance traveled in miles, may be paid, in the discretion of the court, the actual reasonable expense of such public transportation, pursuant to the methods of payment provided by this section. Jurors who are required to remain at the court beyond the normal business closing hour for deliberation or for any other reason may be transported to their homes, or to temporary lodgings where such lodgings are ordered by the court, in a manner directed by the clerk and paid from funds authorized under this section.

(g) The Director of the Administrative Office of the United States Courts shall promulgate such regulations as may be necessary to carry out his authority under this section. [June 25, 1948, ch. 646, § 1, 62 Stat. 952; May 24, 1949, ch. 139, § 97, 63 Stat. 103; July 14, 1949, ch. 333, 63 Stat. 411; Sept. 7, 1957, P.L. 85-299, 71 Stat. 618; Sept. 2, 1965, P.L. 89-165, 79 Stat. 645; Mar. 27, 1968, P.L. 90-274, § 102(a), 82 Stat. 62; Nov. 2, 1978, P.L. 95-572, § 5, 92 Stat. 2454; Dec. 1, 1990, P.L. 101-650, Title III, § 314(b), 104 Stat. 5115; Oct. 29, 1992, P.L. 102-572, Title IV, § 402, 106 Stat. 4511; 28 U.S.C. § 1871.]

JUDGMENTS

§ 25. Lien. — Every judgment rendered by a district court within a State shall be a lien on the property located in such State in the same manner, to the same extent and under the same conditions as a judgment of a court of general jurisdiction in such State, and shall cease to be a lien in the same manner and time. This section does not apply to judgments entered in favor of the United States. Whenever the law of any State requires a judgment of a State court to be registered, recorded, docketed or indexed, or any other act to be done, in a particular manner, or in a certain office or county or parish before such lien attaches, such requirements shall apply only if the law of such State authorizes the judgment of a court of the United States to be registered, recorded, docketed, indexed or otherwise conformed to rules and requirements relating to judgments of the courts of the State. [June 25, 1948, ch. 646, § 1, 62 Stat. 958; Nov. 29, 1990, P.L. 101-647, Title XXXVI, Subtitle B, § 3627, 104 Stat. 4965; 28 U.S.C. § 1962.]

REVIEW—MISCELLANEOUS PROVISIONS

§ 26. Priority of criminal case on appeal from State court. — Criminal cases on review from State courts shall have priority, on the docket of the Supreme Court, over all cases except cases to which the United States

is a party and such other cases as the court may decide to be of public importance. [June 25, 1948, ch. 646, § 1, 62 Stat. 962; 28 U.S.C. § 2102.]

§ 27. Appeal from State court or from a United States court of appeals impropidently taken regarded as petition for writ of certiorari. [Repealed.]

Compiler's notes. This section (28 U.S.C. § 2103), which comprised Act June 25, 1948, ch. 646, § 1, 62 Stat. 962; Sept. 19, 1952, P.L. 87-669, § 1, 76 Stat. 556, was repealed by Act June 27, 1988, P.L. 100-342, § 5(c), 102 Stat. 663.

§ 28. Reviews of State court decisions. — A review by the Supreme Court of a judgment or decree of a State court shall be conducted in the same manner and under the same regulations, and shall have the same effect, as if the judgment or decree reviewed had been rendered in a court of the United States. [June 25, 1948, ch. 646, § 1, 62 Stat. 962; June 27, 1988, P.L. 100-352, § 5(d)(1), 102 Stat. 663; 28 U.S.C. § 2104.]

INJUNCTIONS—THREE-JUDGE COURTS

§ 29. Injunction against enforcement of State statute — Three-judge court required. [Repealed.]

Compiler's notes. This section (28 U.S.C. § 2281), which comprised Act June 25, 1948, ch. 646, § 1, 62 Stat. 968, was repealed by Act Aug. 12, 1976, § 1, Public Law 94-381, 90 Stat. 1119.

§ 30. Stay of State court proceedings. — A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. [June 25, 1948, ch. 646, § 1, 62 Stat. 968; 28 U.S.C. § 2283.]

§ 31. Three-judge court — When required — Composition — Procedure. — (a) A district court of three judges shall be convened when otherwise required by Act of Congress, or when an action is filed challenging the constitutionality of the apportionment of congressional districts or the apportionment of any statewide legislative body.

(b) In any action required to be heard and determined by a district court of three judges under subsection (a) of this section, the composition and procedure of the court shall be as follows:

(1) Upon the filing of a request for three judges, the judge to whom the request is presented shall, unless he determines that three judges are not required, immediately notify the chief judge of the circuit, who shall designate two other judges, at least one of whom shall be a circuit judge. The judges so designated, and the judge to whom the request was presented, shall serve as members of the court to hear and determine the action or proceeding.

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given by registered or certified mail to the Governor and attorney general of the State.

(3) A single judge may conduct all proceedings except the trial, and enter all orders permitted by the rules of civil procedure except as provided in this subsection. He may grant a temporary restraining order on a specific finding, based on evidence submitted, that specified irreparable damage will result if the order is not granted, which order, unless previously revoked by the district judge, shall remain in force only until the hearing and determination by the district court of three judges of an application for a preliminary injunction. A single judge shall not appoint a master, or order a reference, or hear and determine any application for a preliminary or permanent injunction or motion to vacate such an injunction, or enter judgment on the merits. Any action of a single judge may be reviewed by the full court at any time before final judgment. [June 25, 1948, ch. 646, § 1, 62 Stat. 968; June 11, 1960, P.L. 86-507, § 1(19), 74 Stat. 201; Aug. 12, 1976, P.L. 94-381, § 3, 90 Stat. 1119; November 8, 1984, P.L. 98-620, Title IV, Subtitle A, § 402(29)(E), 98 Stat. 3359; 28 U.S.C. § 2284.]

CHAPTER 2

FORESTS AND PARKS

SECTION.

- § 32. Jurisdiction over park — Fugitives from justice.
- § 33. Cutting timber on certain mineral lands — Permits to corporations — Railroad corporations excepted.
- § 34. Unlawful cutting on mineral lands — Notice to Secretary.
- § 35. Offense for unlawful cutting on mineral lands — Punishment.
- § 36. Cutting and removal of timber on certain public lands for certain purposes.
- § 37. Permits to cut and remove timber — Citizens of Idaho and Wyoming.
- § 38. Permits to cut and remove timber — Permits to certain corporations.
- § 39. Limitations of use of timber taken not to apply to certain territory.
- § 40-42. [Repealed.]
- § 42a. Townsites.
City of Rocks National Reserve
- § 42b. Establishment of City of Rocks National Reserve.
- § 42c. Plan and management of reserve.

SECTION.

- § 42d. Establishment.
- § 42e. Wilderness designation.
- § 42f. Federal power and water resources projects.
- § 42g. Present and future use of Snake River.
- § 42h. Administration, protection, and development.
- § 42i. Management plan for recreation area.
- § 42j. Acquisition of property.
- § 42k. Rules and regulations.
- § 42l. Land withdrawn from location, entry, and patent under United States mining laws.
- § 42m. Hunting and fishing.
- § 42n. Ranching, grazing, etc., as valid uses of area.
- § 42o. Civil and criminal jurisdiction of Idaho and Oregon.
- § 42p. Development and operation of facilities and services; cooperation with Federal, State, etc., agencies.
- § 42q. Authorization of appropriations.

§ 32. Jurisdiction over park — Fugitives from justice. — The Yellowstone National Park, as its boundaries now are defined, or as they may be hereafter defined or extended, shall be under the sole and exclusive jurisdiction of the United States. All the laws applicable to places under the sole and exclusive jurisdiction of the United States, shall have force and effect in said park. Nothing in this Act shall be construed to forbid the

service in the park of any civil or criminal process of any court having jurisdiction in the States of Idaho, Montana, and Wyoming. All fugitives from justice taking refuge in said park shall be subject to the same laws as refugees from justice found in the state of Wyoming. [May 7, 1894, ch. 72, § 1; 28 Stat. 73; 16 U.S.C. § 24.]

Compiler's notes. Craters of the Moon under authority of 34 Stat. 225. 43 Stat. (part 2) p. 1947.
was set apart as a national monument by proclamation of the president on May 2, 1924,

§ 33. Cutting timber on certain mineral lands — Permits to corporations — Railroad corporations excepted. — All citizens of the United States and other persons, bona fide residents of the states of Colorado, Nevada, New Mexico, Arizona, Utah, Wyoming, North Dakota, South Dakota, Idaho, or Montana, and all other mineral districts of the United States, are authorized and permitted to fell and remove, for building, agricultural, mining, or other domestic purposes, any timber or other trees growing or being on the public lands, said lands being mineral, and not subject to entry under existing laws of the United States, except for mineral entry, in said states or districts of which such citizens or persons may be at the time bona fide residents, subject to such rules and regulations as the secretary of the interior may prescribe for the protection of the timber and of the undergrowth growing upon such lands, and for other purposes. It shall be lawful for the secretary of the interior to grant permits in accordance with the provisions of this section, to corporations incorporated under a federal law of the United States or incorporated under the laws of a state or territory of the United States, other than the state in which the privilege is requested. Such permits to confer the same rights and benefits upon such corporations as are conferred upon corporations incorporated in the state in which the privilege is to be exercised, but all such corporations, shall first have complied with the laws of that state so as to entitle them to do business therein. The provisions of this section and sections 605 and 606 [§§ 34, 35 herein] of this title shall not extend to railroad corporations. [June 3, 1878, ch. 150, § 1; 20 Stat. 88; Jan. 11, 1921, ch. 22; 41 Stat. 1088; 16 U.S.C. § 604.]

§ 34. Unlawful cutting on mineral lands — Notice to Secretary. — It shall be the duty of such officer as the Secretary of the Interior may designate in whose district any mineral land may be situated to ascertain from time to time whether any timber is being cut or used upon any such lands, except for the purposes authorized by section 604 of this title, within such land district; and, if so, he shall immediately notify the Secretary of the Interior of that fact; and all necessary expenses incurred in making such proper examinations shall be paid for and allowed such officer in making up his next quarterly account. [June 3, 1878, ch. 150, § 2, 20 Stat. 88; 1946 Reorg. Plan No. 3, § 403, eff. July 16, 1946, 11 F.R. 7876, 60 Stat. 1100; 16 U.S.C. § 605.]

§ 35. Offense for unlawful cutting on mineral lands — Punishment. — Any person or persons who shall violate the provisions of sections

604 and 605 [§§ 33, 34 herein] of this title, or any rules and regulations in pursuance thereof made by the Secretary of the Interior, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding \$500, and to which may be added imprisonment for any term not exceeding six months. [June 3, 1878, ch. 150, § 3; 20 Stat. 89; 16 U.S.C. § 606.]

§ 36. Cutting and removal of timber on certain public lands for certain purposes. — In the states of Alaska, Colorado, Montana, Idaho, North Dakota, and South Dakota, Wyoming, New Mexico, and Arizona, and the gold and silver regions of Nevada, California, Oregon, Washington, and Utah in any criminal prosecution or civil action by the United States for a trespass on such public timber lands or to recover timber or lumber cut thereon, it shall be a defense if the defendant shall show that the said timber was so cut or removed from the timber lands for use in such state by a resident thereof for agricultural, mining, manufacturing, or domestic purposes under rules and regulations made and prescribed by the secretary of the interior and has not been transported out of the same (but nothing herein contained shall operate to enlarge the rights of any railway company to cut timber on the public domain). The secretary of the interior may make suitable rules and regulations to carry out the provisions of this section, and he may designate the sections or tracts of land where timber may be cut, and it shall not be lawful to cut or remove any timber except as may be prescribed by such rules and regulations, but this section shall not operate to repeal sections 604 to 606 [§§ 33-35 herein] of this title. [March 3, 1891, ch. 559, 26 Stat. 1093; March 3, 1891, ch. 561, § 8 in part, 26 Stat. 1099; Feb. 13, 1893, ch. 103, 27 Stat. 444; March 3, 1901, ch. 855, June 25, 1959, P.L. 86-70, § 41, 73 Stat. 151; 16 U.S.C. § 607.]

§ 37. Permits to cut and remove timber — Citizens of Idaho and Wyoming. — It shall be lawful for the secretary of the interior to grant permits under the provisions of section 607 [§ 36 herein] of this title, to citizens of Idaho and Wyoming to cut timber in the state of Wyoming west of the Continental Divide on the Snake River and its tributaries to the boundary line of Idaho, for agricultural, mining, or other domestic purposes, and to remove the timber so cut to the state of Idaho. [Mar. 3, 1891, ch. 561, § 8 [part], as added July 1, 1898, ch. 546, § 1; 30 Stat. 618; 16 U.S.C. § 611.]

§ 38. Permits to cut and remove timber to certain corporations. — Section 1 of an Act entitled “An Act authorizing the citizens of Colorado, Nevada, and the Territories to fell and remove timber on the public domain for mining and domestic purposes,” approved June 3, 1878, chapter 150, page 88, volume 20, United States Statutes at Large [16 U.S.C. § 604], and section 8 of an Act entitled “An Act to repeal timber-culture laws, and for other purposes,” approved March 3, 1891, as amended by an Act approved March 3, 1891, chapter 559, page 1093, volume 26, United States Statutes at Large [16 U.S.C. §§ 607-611a; 43 U.S.C. § 1166], and the several Acts

amendatory thereof, be, and the same are hereby, extended so that it shall be lawful for the Secretary of the Interior to grant permits to corporations incorporated under a Federal law of the United States or incorporated under the laws of a State or Territory of the United States, other than the State in which the privilege is requested, said permits to confer the same rights and benefits upon such corporations as are conferred by the aforesaid Acts upon corporations incorporated in the State in which the privilege is to be exercised; Provided, That all such corporations shall first have complied with the law of that State so as to entitle them to do business therein; but nothing herein [this section] shall operate to enlarge the rights of any railway company to cut timber on the public domain. [Jan. 11, 1921, ch. 22; 41 Stat. 1088; 16 U.S.C. § 612.]

§ 39. Limitations of use of timber taken not to apply to certain territory. — The provisions of chapter five hundred and fifty-nine of the Revised Statutes of the United States, approved March third, eighteen hundred and ninety-one [16 U.S.C. § 607], limiting the use of timber taken from public lands to residents of the State in which such timber is found, for use within said State, shall not apply to the south slope of Pryor Mountains, in the State of Montana, lying south of the Crow Reservation, west of the Big Horn River, and east of Sage Creek; but within the above-described boundaries the provisions of said section shall apply equally to the residents of the States of Wyoming and Montana, and to the use of timber taken from the above-described tract in either of the above-named states. [Mar. 3, 1901, ch. 862; 31 Stat. 1439; 16 U.S.C. § 613.]

§§ 40, 41. Sale, disposal of burnt timber. [Repealed.]

Compiler's notes. These sections (16 U.S.C. §§ 614, 615), comprising Act March 4, 1913, ch. 165, §§ 1, 2, 37 Stat. 1015, 1016; July 3, 1926, ch. 779, §§ 1, 2, 44 Stat. 890, 891 were repealed by Act Sept. 25, 1962, P.L. 87-689, § 2, 76 Stat. 588.

§ 42. Exchange of school lands with federal government. [Repealed.]

Compiler's notes. This section (16 U.S.C. § 484), which comprised Act Sept. 22, 1932, ch. 404, §§ 1, 2, 42 Stat. 1018, was repealed by Act July 6, 1960, P.L. 86-596, § 3, 74 Stat. 835.

§ 42a. Townsites. — When the Secretary of Agriculture determines that a tract of National Forest System land in Alaska or in the eleven contiguous Western States is located adjacent to or contiguous to an established community, and that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership, he may, upon application, set aside and designate as a townsite an area of not to exceed six hundred and forty acres of National Forest System land for any one application. After public notice, and satisfactory showing of need there-for by any county, city, or other local governmental subdivision, the Secretary may offer such area for sale to a governmental subdivision at a

price not less than the fair market value thereof: Provided, however, That the Secretary may condition conveyances of townsites upon the enactment, maintenance, and enforcement of a valid ordinance which assures any land so conveyed will be controlled by the governmental subdivision so that use of the area will not interfere with the protection, management, and development of adjacent or contiguous National Forest System lands. [July 31, 1958, P.L. 85-569, 72 Stat. 438; Oct. 21, 1976, P.L. 94-579, Title II, § 213, 90 Stat. 2760; 16 U.S.C. § 478a.]

CITY OF ROCKS NATIONAL RESERVE

§ 42b. Establishment of City of Rocks National Reserve. — (a) Establishment. There is hereby established the City of Rocks National Reserve (hereinafter referred to as the “reserve”), in order to preserve and protect the significant historical and cultural resources; to manage recreational use; to protect and maintain scenic quality; and to interpret the nationally significant values of the reserve.

(b) Area included. The reserve shall include approximately fourteen thousand three hundred and twenty acres as depicted on the map entitled “Boundary Map, City of Rocks National Reserve, Idaho” numbered P30-80,005 and dated October 1987. The map shall be on file in the offices of the National Park Service, Department of the Interior and the Offices of the Governor, State of Idaho.

(c) Legal description. Within six months after November 18, 1988, the Secretary of the Interior (hereinafter in this subchapter referred to as the “Secretary”) shall file a legal description of the reserve designated under this section with the Committee on Interior and Insular Affairs of the United States House of Representatives and with the Committee on Energy and Natural Resources of the United States Senate. Such legal description shall have the same force and effect as if included in this subchapter, except that the Secretary may correct clerical and typographical errors in such legal description and in the map referred to in subsection b of this section. The legal description shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior and the offices of the Governor of the State of Idaho. [Nov. 18, 1988, P.L. 100-696, Title II, § 201, 102 Stat. 4573; 16 U.S.C. § 460yy.]

§ 42c. Plan and management of reserve. — (a) Development of plan. To achieve the purpose of this subchapter, the Secretary, acting through the National Park Service, in cooperation with appropriate State and Federal agencies, local units of government and local residents shall formulate a comprehensive plan for the protection, preservation, and interpretation of the reserve. The plan shall identify those areas or zones within the reserve which would most appropriately be devoted to —

(1) public use and development;

(2) historic and natural preservation; and

(3) private use subject to appropriate local ordinances designed to protect the historic rural setting.

(b) Transmittal of plan to Congress and State. Within eighteen months following November 18, 1988, the Secretary shall transmit the plan to the President of the Senate and the Speaker of the House of Representatives and to the Governor of the State of Idaho.

(c) Transfer of management and administration to State or local units of government. At such time as the State or appropriate units of local government having jurisdiction over land use within the reserve have enacted ordinances or established regulations which in the judgment of the Secretary will protect and preserve the historic and natural features of the area in accordance with the comprehensive plan, the Secretary shall, pursuant to cooperative agreement —

(1) transfer management and administration over all or any part of the property acquired under subsection (d) of this section to the State or appropriate units of local government;

(2) provide technical assistance to such State or units of local government in the management, protection, and interpretation of the reserve; and

(3) make periodic grants, which shall be supplemental to any other funds to which the grantee may be entitled under any other provision of law, to such State or local unit of government to carry out the purposes of this subchapter.

(d) Acquisition of land. (1) The Secretary is authorized to acquire such lands and interests as he determines are necessary to accomplish the purposes of this subchapter by donation, purchase with donated funds, or appropriated funds, or exchange, except that the Secretary may not acquire the fee simple title to any land without the consent of the owner. The Secretary shall, in addition, give prompt and careful consideration to any offer made by an individual owning property within the reserve to sell such property, if such individual notifies the Secretary that the continued ownership of such property is causing, or would result in, undue hardship.

(2) Lands and waters, and interests therein, within the boundaries of the reserve which were administered by the Forest Service, United States Department of Agriculture or the Bureau of Land Management, Department of the Interior prior to November 18, 1988, are hereby transferred to the administrative jurisdiction of the Secretary to be administered by the National Park Service in accordance with this subchapter.

(3) Lands and interests therein so acquired shall, so long as responsibility for management and administration remains with the United States, be administered by the Secretary subject to the provisions of sections 1 and 2 to 4 of this title, and in a manner consistent with the purpose of this title.

(e) Withdrawal of management and administration from State or local units of government. If, after the transfer of management and administration of any lands pursuant to subsection (c) of this section, the Secretary determines that the reserve is not being managed in a manner consistent with the purposes of this subchapter, he shall so notify the appropriate officers of the State or local unit of government to which such transfer was made and provide for a one hundred and eighty-day period in which the transferee may make such modifications in applicable laws, ordinances,

rules, and procedures as will be consistent with such purposes. If, upon the expiration of such one hundred and eighty-day period, the Secretary determines that such modifications have not been made or are inadequate, he shall withdraw the management and administration from the transferee and he shall manage such lands in accordance with the provisions of this subchapter.

(f) Water rights. Congress finds that there are unique circumstances with respect to the water and water related resources within the Reserve designated by this subchapter. The Congress recognizes that the management of this area may be transferred to the State of Idaho, that the State has committed to providing the water necessary to fulfill the purposes of this subchapter, and that there is little or no water or water-related resources that require the protection of a Federal reserved water right. Nothing in this subchapter, nor any action taken pursuant thereto, shall constitute either an express or implied reservation of water or water right for any purpose: *Provided*, That the United States shall retain that reserved water right which is associated with the initial establishment and withdrawal of the national forest lands which will be transferred to the Reserve under this subchapter.

(g) Withdrawal of lands from disposition under other laws. Subject to valid existing rights, Federal lands and interests therein, within the reserve, are hereby withdrawn from disposition under the public land laws and from entry or appropriation under the mining laws of the United States, from the operation of the mineral leasing laws of the United States, and from operation of the Geothermal Steam Act of 1970, as amended.

(h) Authorization of appropriations. There is hereby authorized to be appropriated not to exceed \$2,000,000 to carry out the provisions of this subchapter. [Nov. 18, 1988, P.L. 100-696, Title II, § 202, 102 Stat. 4574; 16 U.S.C. § 460yy-1.]

HELLS CANYON NATIONAL RECREATION AREA

§ 42d. Establishment. — (a) Purposes. To assure that the natural beauty, and historical and archeological values of the Hells Canyon area and the seventy-one-mile segment of the Snake River between Hells Canyon Dam and the Oregon-Washington border, together with portions of certain of its tributaries and adjacent lands, are preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced, there is hereby established the Hells Canyon National Recreation Area.

(b) Composition; publication of boundary description in Federal Register.

The Hells Canyon National Recreation Area (hereinafter referred to as the “recreation area”), which includes the Hells Canyon Wilderness (hereinafter referred to as the “wilderness”), the components of the Wild and Scenic Rivers System designated in section 3 of this Act, and the wilderness study areas designated in section 460gg-5(d) of this title, shall comprise the lands and waters generally depicted on the map entitled “Hells Canyon National Recreation Area” dated May 1978, which shall be on file and

available for public inspection in the office of the Chief, Forest Service, United States Department of Agriculture. The Secretary of Agriculture (hereinafter referred to as "the Secretary"), shall, as soon as practicable, but no later than eighteen months after December 31, 1975, publish a detailed boundary description of the recreation area, the wilderness study areas designated in section 460gg-5(d) of this title, and the wilderness established in section 460gg-1 of this title in the Federal Register. [Dec. 31, 1975, P.L. 94-199, § 1, 89 Stat. 1117; Nov. 10, 1978, P.L. 95-625, Title VI, § 607, 92 Stat. 3520, 16 U.S.C. § 460gg.]

§ 42e. Wilderness designation. — (a) Map designation. The lands depicted as the "Hells Canyon Wilderness" on the map referred to in section 460gg(b) of this title are hereby designated as wilderness.

(b) Application of Wilderness Act. The wilderness designated by this subchapter shall be administered by the Secretary in accordance with the provisions of this subchapter or in accordance with the provisions of the Wilderness Act [16 U.S.C. 1131 et seq.], whichever is the more restrictive, except that any reference in such provisions of the Wilderness Act to the effective date of that Act shall be deemed to be a reference to the effective date of this subchapter. The provisions of section 460gg-6(b) and section 460gg-8 of this title shall apply to the wilderness. The Secretary shall make such boundary revisions to the wilderness as may be necessary due to the exercise of his authority under subsection 3(b) of this Act. [Dec. 31, 1975, P.L. 94-199, § 2, 89 Stat. 1117, 16 U.S.C. § 460gg-1.]

§ 42f. Federal power and water resources projects. — (a) Licenses by Federal Energy Regulatory Commission. Notwithstanding any other provision of law, or any authorization heretofore given pursuant to law, the Federal Energy Regulatory Commission may not license the construction of any dam, water conduit, reservoir, powerhouse, transmission line, or other project work under the Federal Power Act (41 Stat. 1063), as amended (16 U.S.C. 791a et seq.), within the recreation area: *Provided*, That the provisions of the Federal Power Act (41 Stat. 1063) shall continue to apply to any project (as defined in such Act), and all of the facilities and improvements required or used in connection with the operation and maintenance of said project, in existence within the recreation area which project is already constructed or under construction on December 31, 1975.

(b) Assistance detrimental to protected waters. No department or agency of the United States may assist by loan, grant, license, or otherwise the construction of any water resource facility within the recreation area which the Secretary determines would have a direct and adverse effect on the values for which the waters of the area are protected. [Dec. 31, 1975, P.L. 94-199, § 4, 89 Stat. 1118; Aug. 7, 1977, P.L. 95-91, Title IV, § 402(a)(1)(A), 91 Stat. 583; 16 U.S.C. § 460gg-2.]

§ 42g. Present and future use of Snake River. — (a) Waters upstream from boundaries of area. No provision of the Wild and Scenic Rivers Act [16 U.S.C. 1271 et seq.], nor of this subchapter, nor any

guidelines, rules, or regulations issued hereunder, shall in any way limit, restrict, or conflict with present and future use of the waters of the Snake River and its tributaries upstream from the boundaries of the Hells Canyon National Recreation Area created hereby, for beneficial uses, whether consumptive or nonconsumptive, now or hereafter existing, including, but not limited to, domestic, municipal, stockwater, irrigation, mining, power, or industrial uses.

(b) Flow requirements. No flow requirements of any kind may be imposed on the waters of the Snake River below Hells Canyon Dam under the provisions of the Wild and Scenic Rivers Act [16 U.S.C. 1271 et seq.], of this subchapter, or any guidelines, rules, or regulations adopted pursuant thereto. [Dec. 31, 1975, P.L. 94-199, § 6, 89 Stat. 1118; 16 U.S.C. § 460gg-3.]

§ 42h. Administration, protection, and development. — Except as otherwise provided in section 460gg-1 of this title and section 3 of this Act, and subject to the provisions of section 460gg-7 of this title, the Secretary shall administer the recreation area in accordance with the laws, rules, and regulations applicable to the national forests for public outdoor recreation in a manner compatible with the following objectives:

(1) the maintenance and protection of the free flowing nature of the rivers within the recreation area;

(2) conservation of scenic, wilderness, cultural, scientific, and other values contributing to the public benefit;

(3) preservation, especially in the area generally known as Hells Canyon, of all features and peculiarities believed to be biologically unique including, but not limited to, rare and endemic plant species, rare combinations of aquatic, terrestrial, and atmospheric habitats, and the rare combinations of outstanding and diverse ecosystems and parts of ecosystems associated therewith;

(4) protection and maintenance of fish and wildlife habitat;

(5) protection of archeological and paleontologic sites and interpretation of these sites for the public benefit and knowledge insofar as it is compatible with protection;

(6) preservation and restoration of historic sites associated with and typifying the economic and social history of the region and the American West; and

(7) such management, utilization, and disposal of natural resources on federally owned lands, including, but not limited to, timber harvesting by selective cutting, mining, and grazing and the continuation of such existing uses and developments as are compatible with the provisions of this subchapter. [Dec. 31, 1975, P.L. 94-199, § 7, 89 Stat. 1118; 16 U.S.C. § 460gg-4.]

§ 42i. Management plan for recreation area. — (a) Development and submission. Within five years from December 31, 1975, the Secretary shall develop and submit to the Committees on Interior and Insular Affairs of the United States Senate and House of Representatives a comprehensive management plan for the recreation area which shall provide for a broad range of land uses and recreation opportunities.

(b) Consideration of historic, archeological and paleontological resources; inventory; recommendation of areas for listing in National Register of Historic Places; recommendation for protection and research of resources.

In the development of such plan, the Secretary shall consider the historic, archeological, and paleontological resources within the recreation area which offer significant opportunities for anthropological research. The Secretary shall inventory such resources and may recommend such areas as he deems suitable for listing in the National Register of Historic Places. The Secretary's comprehensive plan shall include recommendations for future protection and controlled research use of all such resources.

(c) Scenic roads and other means of transit. The Secretary shall, as a part of his comprehensive planning process, conduct a detailed study of the need for, and alternative routes of, scenic roads and other means of transit to and within the recreation area. In conducting such study the Secretary shall consider the alternative for upgrading existing roads and shall, in particular, study the need for and alternative routes of roads or other means of transit providing access to scenic views of and from the Western rim of Hells Canyon.

(d) Wilderness areas; review by Secretary; recommendations of President to Congress; notice of hearings and meetings. The Secretary shall review, as to their suitability or unsuitability for preservation as wilderness, the areas generally depicted on the map referred to in section 460gg of this title as the "Lord Flat-Somers Point Plateau Wilderness Study Area", and the "West Side Reservoir Face Wilderness Study Area", and the "Mountain Sheep Wilderness Study Area" and report his findings to the President. The Secretary shall complete his review and the President shall, within five years from December 31, 1975, advise the United States Senate and House of Representatives of his recommendations with respect to the designation of lands within such area as wilderness. In conducting his review the Secretary shall comply with the provisions of section 1132(d) of this title and shall give public notice at least sixty days in advance of any hearings or other public meeting concerning the wilderness study area. The Secretary shall administer all Federal lands within the study areas so as not to preclude their possible future designation by the Congress as wilderness. Nothing contained herein shall limit the President in proposing, as part of this recommendation to Congress, the designation as wilderness of any additional area within the recreation area which is predominately of wilderness value.

(e) Public participation in reviews and preparation of plan; cooperation of other Federal agencies. In conducting the reviews and preparing the comprehensive management plan required by this section, the Secretary shall provide for full public participation and shall consider the views of all interested agencies, organizations, and individuals including but not limited to, the Nez Perce Tribe of Indians, and the States of Idaho, Oregon, and Washington. The Secretaries or Directors of all Federal departments, agencies, and commissions having a relevant expertise are hereby authorized and directed to cooperate with the Secretary in his review and to make such studies as the Secretary may request on a cost reimbursable basis.

(f) Continuation of ongoing activities. Such activities as are compatible with the provisions of this subchapter, but not limited to, timber harvesting by selective cutting, mining, and grazing may continue during development of the comprehensive management plan, at current levels of activity and in areas of such activity on December 31, 1975. Further, in development of the management plan, the Secretary shall give full consideration to continuation of these ongoing activities in their respective areas. [Dec. 31, 1975, P.L. 94-199, § 8, 89 Stat. 1119 ; 16 U.S.C. § 460gg-5.]

§ 42j. Acquisition of property. — (a) Authority of Secretary; manner of acquisition. The Secretary is authorized to acquire such lands or interests in land (including, but not limited to, scenic easements) as he deems necessary to accomplish the purposes of this subchapter by purchase with donated or appropriated funds with the consent of the owner, donation, or exchange.

(b) Acquisition without consent of owners; limitations; scenic easements. The Secretary is further authorized to acquire by purchase with donated or appropriated funds such lands or interests in lands without the consent of the owner only if (1) he deems that all reasonable efforts to acquire such lands or interests therein by negotiation have failed, and (2) the total acreage of all other lands within the recreation area to which he has acquired fee simple title or, lesser interests therein without the consent of the owner is less than 5 per centum of the total acreage which is privately owned within the recreation area on December 31, 1975: *Provided*, That the Secretary may acquire scenic easements in lands without the consent of the owner and without restriction to such 5 per centum limitation: *Provided further*, That the Secretary may only acquire scenic easements in lands without the consent of the owner after the date of publication of the regulations required by section 460gg-7 of this title when he determines that such lands are being used, or are in imminent danger of being used, in a manner incompatible with such regulations.

(c) Donation of Oregon land; donation or exchange of Idaho land. Any land or interest in land owned by the State of Oregon or any of its political subdivisions may be acquired only by donation. Any land or interest in land owned by the State of Idaho or any of its political subdivisions may be acquired only by donation or exchange.

(d) "Scenic easement" defined. As used in this subchapter the term "scenic easement" means the right to control the use of land in order to protect esthetic values for the purposes of this subchapter, but shall not preclude the continuation of any farming or pastoral use exercised by the owner as of December 31, 1975.

(e) Offers to sell land; hardship from delay. The Secretary shall give prompt and careful consideration to any offer made by a person owning land within the recreation area to sell such land to the United States. The Secretary shall specifically consider any hardship to such person which might result from an undue delay in acquiring his property.

(f) Exchange of land; equalization payments. In exercising his authority to acquire property by exchange, the Secretary may accept title to any

non-Federal property, or interests therein, located within the recreation area and, notwithstanding any other provision of law, he may convey in exchange therefor any federally owned property within the same State which he classifies as suitable for exchange and which is under his administrative jurisdiction: *Provided*, That the values of the properties so exchanged shall be approximately equal, or if they are not approximately equal, they shall be equalized by the payment of cash to the grantor or to the United States as the circumstances require. In the exercise of his exchange authority, the Secretary may utilize authorities and procedures available to him in connection with exchanges of national forest lands.

(g) Acquisition of mineral interests. Notwithstanding any other provision of law, the Secretary is authorized to acquire mineral interests in lands within the recreation area, with or without the consent of the owner. Upon acquisition of any such interest, the lands and/or minerals covered by such interest are by this subchapter withdrawn from entry or appropriation under the United States mining laws and from disposition under all laws pertaining to mineral leasing and all amendments thereto.

(h) Transfer of Federal property to Secretary. Notwithstanding any other provision of law, any Federal property located within the recreation area may, with the concurrence of the agency having custody thereof, be transferred without consideration to the administrative jurisdiction of the Secretary for use by him in carrying out the purposes of this subchapter. Lands acquired by the Secretary or transferred to his administrative jurisdiction within the recreation area shall become parts of the national forest within or adjacent to which they are located. [Dec. 31, 1975, P.L. 94-199, § 9, 89 Stat. 1120; 16 U.S.C. § 460gg-6.]

§ 42k. Rules and regulations. — The Secretary shall promulgate, and may amend, such rules and regulations as he deems necessary to accomplish the purposes of this subchapter. Such rules and regulations shall include, but are not limited to —

(a) standards for the use and development of privately owned property within the recreation area, which rules or regulations the Secretary may, to the extent he deems advisable, implement with the authorities delegated to him in section 460gg-6 of this title, and which may differ among the various parcels of land within the recreation area;

(b) standards and guidelines to insure the full protection and preservation of the historic, archeological, and paleontological resources in the recreation area;

(c) provision for the control of the use of motorized and mechanical equipment for transportation over, or alteration of, the surface of any Federal land within the recreation area;

(d) provision for the control of the use and number of motorized and nonmotorized river craft: *Provided*, That the use of such craft is hereby recognized as a valid use of the Snake River within the recreation area; and

(e) standards for such management, utilization, and disposal of natural resources on federally owned lands, including but not limited to, timber

harvesting by selective cutting, mining, and grazing and the continuation of such existing uses and developments as are compatible with the provisions of this subchapter. [Dec. 31, 1975, P.L. 94-199, § 10, 89 Stat. 1121; 16 U.S.C. § 460gg-7.]

§ 42l. Lands withdrawn from location, entry, and patent under United States mining laws. — Notwithstanding the provisions of section 1133(d)(2) of this title and subject to valid existing rights, all Federal lands located in the recreation area are hereby withdrawn from all forms of location, entry, and patent under the mining laws of the United States, and from disposition under all laws pertaining to mineral leasing and all amendments thereto. [Dec. 31, 1975, P.L. 94-199, § 11, 89 Stat. 1122; 16 U.S.C. § 460gg-8.]

§ 42m. Hunting and fishing. — The Secretary shall permit hunting and fishing on lands and waters under his jurisdiction within the boundaries of the recreation area in accordance with applicable laws of the United States and the States wherein the lands and waters are located except that the Secretary may designate zones where, and establish periods when, no hunting or fishing shall be permitted for reasons for public safety, administration, or public use and enjoyment. Except in emergencies, any regulations of the Secretary pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. [Dec. 31, 1975, P.L. 94-199, § 12, 89 Stat. 1122 ; 16 U.S.C. § 460gg-9.]

§ 42n. Ranching, grazing, etc., as valid uses of area. — Ranching, grazing, farming, timber harvesting, and the occupation of homes and lands associated therewith, as they exist on December 31, 1975, are recognized as traditional and valid uses of the recreation area. [Dec. 31, 1975, P.L. 94-199, § 13, 89 Stat. 1122; 16 U.S.C. § 460gg-10.]

§ 42o. Civil and criminal jurisdiction of Idaho and Oregon. — Nothing in this subchapter shall diminish, enlarge, or modify any right of the States of Idaho, Oregon, or any political subdivisions thereof, to exercise civil and criminal jurisdiction within the recreation area or of rights to tax persons, corporations, franchises, or property, including mineral or other interests, in or on lands or waters within the recreation area. [Dec. 31, 1975, P.L. 94-199, § 14, 89 Stat. 1122; 16 U.S.C. § 460gg-11.]

§ 42p. Development and operation of facilities and services; cooperation with Federal, State, etc., agencies. — The Secretary may cooperate with other Federal agencies, with State and local public agencies, and with private individuals and agencies in the development and operation of facilities and services in the area in furtherance of the purposes of this subchapter, including, but not limited to, restoration and maintenance of the historic setting and background of towns and settlements within the recreation area. [Dec. 31, 1975, P.L. 94-199, § 15, 89 Stat. 1122; 16 U.S.C. § 460gg-12.]

§ 42q. Authorization of appropriations. — (a) Acquisition of lands. There is hereby authorized to be appropriated the sum of not more than \$10,000,000 for the acquisition of lands and interests in lands within the recreation area.

(b) Development of recreation facilities. There is hereby authorized to be appropriated the sum of not more than \$10,000,000 for the development of recreation facilities within the recreation area.

(c) Inventory, identification, development and protection of historic and archeological sites. There is hereby authorized to be appropriated the sum of not more than \$1,500,000 for the inventory, identification, development, and protection of the historic and archeological sites described in section 5 of this Act. [Dec. 31, 1975, P.L. 94-199, § 16, 89 Stat. 1122; 16 U.S.C. § 460gg-13.]

CHAPTER 3

DESERT LANDS

SECTION.

- § 43. Entry right generally — Extent of right to appropriate waters.
- § 44. Desert lands defined — Question how determined.
- § 45. Application to certain states.
- § 46. Assignments of entries.
- § 47. Resident citizenship of State as qualifications for entry — Residence in state required.
- § 48. Unsurveyed lands not subject to entry — Preferential right of entry.
- § 49. Filing irrigation plan — Association of entrymen.
- § 50. [Obsolete.]
- § 50a. Suspension of cultivation and improvement operations on homestead and desert land entries.
- § 51. Issue of patent on final proof — Citizenship requirement as to patentee — Limit as to amount of holding.
- § 52. Desert-land entry in addition to homestead entry.
- § 53. Reclamation requirements waived in favor of disabled soldiers, etc.
- § 54. Extension of time for completing work and making proof under desert-land entries.

SECTION.

- § 55. Further extension of time, and conditions, for perfecting desert-land entries.
- § 56. Further extension of time to desert-land entrymen.
- § 57. Grant of desert land to States authorized.
- § 58. Grant of desert land to States authorized.
- § 59. Patents for reclaimed lands — Limit to one person — Surplus from sale.
- § 59a. Quitclaim deeds to public-land states.
- § 59b. Filing of application.
- § 59c. Content of application — Prior private rights saved.
- § 59d. When quitclaim or relinquishment becomes effective.
- § 60. Liens on lands for expenses of reclamation.
- § 61. [Repealed.]
- § 62. Time for reclamation — Failure.
- § 63. Preference right of Carey Act entrymen to new entry under federal laws.
- § 64. Additional arid lands available to Colorado, Idaho, Nevada, and Wyoming for reclamation.

§ 43. Entry right generally — Extent of right to appropriate waters. It shall be lawful for any citizen of the United States, or any person of requisite age “who may be entitled to become a citizen, and who has filed his declaration to become such” and upon payment of 25 cents per acre — to file a declaration under oath with the officer designated by the Secretary of the Interior of the land district in which any desert land is situated, that he intends to reclaim a tract of desert land not exceeding one-half section, by conducting water upon the same, within the period of three years thereafter: *Provided, however,* That the right to the use of water by the person so

conducting the same, on or to any tract of desert land of three hundred and twenty acres shall depend upon bona fide prior appropriation: and such right shall not exceed the amount of water actually appropriated, and necessarily used for the purpose of irrigation and reclamation: and all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights. Said declaration shall describe particularly said one-half section of land if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey. At any time within the period of three years after filing said declaration, upon making satisfactory proof to the officer designated by the Secretary of the Interior of the reclamation of said tract of land in the manner aforesaid, and upon the payment to such officer of the additional sum of \$1 per acre for a tract of land not exceeding three hundred and twenty acres to any one person, a patent for the same shall be issued to him. Except as provided in section 3 of the Act of June 16, 1955 (69 Stat. 138), as amended, no person may make more than one entry under sections 321 to 323, 325, and 327 to 329 of this title [title 43, U.S.C.]. However, in that entry one or more tracts may be included, and the tracts so entered need not be contiguous. The aggregate acreage of desert land which may be entered by any one person under this section shall not exceed three hundred and twenty acres, and all the tracts entered by one person shall be sufficiently close to each other to be managed satisfactorily as an economic unit, as determined under rules and regulations issued by the Secretary of the Interior. [Mar. 3, 1877, ch. 107, § 1, 19 Stat. 377; 26 Stat. 391; 42 Stat. 208; 43 Stat. 1145; 60 Stat. 1100; Aug. 14, 1958, P.L. 85-641, § 1, 72 Stat. 596; 43 U.S.C. § 321.]

§ 44. Desert lands defined — Question how determined. — All lands exclusive of timber lands and mineral lands which will not, without irrigation, produce some agricultural crop, shall be deemed desert lands, within the meaning of sections 321 to 323, 325, and 327 to 329 of this title [title 43, U.S.C.], which fact shall be ascertained by proof of two or more credible witnesses under oath, whose affidavits shall be filed in the land office in which said tract of land may be situated.

The determination of what may be considered desert land shall be subject to the decision and regulation of the Secretary of the Interior or such officer as he may designate. [Mar. 3, 1877, ch. 107, §§ 2, 3, 19 Stat. 377; 60 Stat. 1100; 43 U.S.C. § 322.]

§ 45. Application to certain states. — Sections 321 to 323, 325, and 327 to 329 of this title [title 43, U.S.C.] shall only apply to and take effect in the states of California, Colorado, Oregon, Nevada, Washington, Idaho, Montana, Utah, Wyoming, Arizona, New Mexico, and North and South Dakota. [Mar. 3, 1877, ch. 107, §§ 3, 8, 19 Stat. 377; as added Mar. 3, 1891, ch. 561, § 2, 26 Stat. 1096; Jan. 6, 1921, ch. 12, 41 Stat. 1086; 43 U.S.C. § 323.]

§ 46. Assignments of entries. — No assignment after March 28, 1908, of an entry made under sections 321 to 323, 325, and 327 to 329 of this title [title 43 U.S.C.] shall be allowed or recognized, except it be to an individual who is shown to be qualified to make entry under said sections of the land covered by the assigned entry, and such assignments may include all or part of an entry; but no assignment to or for the benefit of any corporation or association shall be authorized or recognized. [Mar. 28, 1908, ch. 112, § 2, 35 Stat. 52; 43 U.S.C. § 324.]

§ 47. Resident citizenship of State as qualification for entry. — Residence in state required. — Excepting in the State of Nevada, no person shall be entitled to make entry of desert lands unless he be a resident citizen of the State or Territory in which the land sought to be entered is located. [Mar. 3, 1877, ch. 107, § 8, as added Mar. 3, 1891, ch. 561, § 2, 26 Stat. 1096; Jan. 6, 1921, ch. 12, 41 Stat. 1086; 43 U.S.C. § 325.]

§ 48. Unsurveyed lands not subject to entry — Preferential right of entry after survey. — From and after March 28, 1908, the right to make entry of desert lands under the provisions of sections 321 to 323, 325, and 327 to 329 of this title [title 43, U.S.C.], shall be restricted to surveyed public lands of the character contemplated by said acts, and no such entries of unsurveyed lands shall be allowed or made or record: *provided, however*, That any individual qualified to make entry of desert lands under said sections who has, prior to survey, taken possession of a tract of unsurveyed desert land not exceeding in area three hundred and twenty acres in compact form, and has reclaimed or has in good faith commenced the work of reclaiming the same, shall have the preference right to make entry of such tract under said sections, in conformity with the public land surveys, within ninety days after the filing of the approved plat of survey in the district land office. [May 28, 1908, ch. 112, § 1, 35 Stat. 52; 43 U.S.C. § 326.]

§ 49. Filing irrigation plan — Association of entrymen. — At the time of filing the declaration required in section 321 of this title [title 43, U.S.C.] the party shall also file a map of said land, which shall exhibit a plan showing the mode of contemplated irrigation, and which plan shall be sufficient to thoroughly irrigate and reclaim said land, and prepare it to raise ordinary agricultural crops, and shall also show the source of the water to be used for irrigation and reclamation. Persons entering or proposing to enter separate sections, or fractional parts of sections, of desert lands, may associate together in the construction of canals and ditches for irrigating and reclaiming all of said tracts, and may file a joint map or maps showing their plan of internal improvements. [Mar. 3, 1877, ch. 107, § 4, as added Mar. 3, 1891, ch. 561, § 2, 26 Stat. 1096; 43 U.S.C. § 327.]

§ 50. Expenditures and cultivation — Reversion of lands. [Obsolete.]

Compiler's notes. The operation of this section was suspended during World War I, as to entrymen in military and naval service, by

Act Aug. 7, 1917, ch. 48, 40 Stat. 250 and is now obsolete and is no longer carried in the United States Code.

§ 50a. Suspension of cultivation and improvement operations on homestead and desert land entries. — Any person who holds a homestead entry on public lands which was allowed and subsisting on March 1, 1956, or which, based on an application on file on March 1, 1956, was allowed and subsisting on the date of approval of this act, is hereby granted leave of absence from the lands until March 1, 1959, and any person who holds a homestead or desert land entry which was allowed and subsisting on March 1, 1956, or which, based on an application on file on March 1, 1956, was allowed and subsisting on the date of approval of this act, is hereby granted permission to suspend until March 1, 1959, further operations looking to the cultivation and improvement of the lands: Provided, That such entryman shall forfeit no rights and shall not otherwise be excused from full compliance with the applicable public land laws by reason of such absence or of such suspension of cultivation and improvement operations: And provided further, That the rights of such entrymen shall not be protected by this act unless they file with the land office having jurisdiction over the area in which the land is located, (a) a notice of their intention to absent themselves from the land or to suspend cultivation and improvement operations and accompanying such notice information as to location and extent of present cultivation or improvement placed on the entry, and (b) a grant to the United States, for itself and for its lessees, licensees, and permittees, of a right to enter upon and occupy the lands which have not been prepared for cultivation or which have not had improvements placed on them, without recourse, for any purpose authorized by the public land laws, except that such grant need not include a right to construct permanent improvements on the land or to permit a substantial change in its character.

Any person who on March 1, 1956, had on file a homestead or desert land application which application shall be allowed on its merits subsequent to enactment of this act and prior to March 1, 1959, shall not be required to enter upon the lands and commence residence thereon, or cultivate and improve the lands prior to March 1, 1959: Provided, That said person files with the land offices having jurisdiction over the area in which the land is located, (a) within sixty days after the date of allowance of his entry, a notice of his intention to delay initiation of his residence, cultivation, or improvements, and (b) at least ninety days prior to initiation of his residence, cultivation, or improvements, a notice of his intention to initiate said activity. For the purposes of the homestead and desert land laws, March 1, 1959, may be treated as the date of the entry, if an actual entry has not been made prior to that date. If an actual entry is made prior to March 1, 1959, the date of such actual entry shall be the date of entry for the purposes of the homestead and desert land laws. Until an actual entry by a person subject to the provisions of this section has been made, or until March 1, 1959, whichever first occurs, the United States, for itself and for its lessees, permittees, and licensees, shall retain the right to enter upon and occupy the lands in each such entry, without recourse, for any purpose authorized by the public land laws: Provided, That the United States, its lessees, permittees, and licensees, shall not construct permanent improvements on the lands or otherwise substantially change such lands in their character.

Notwithstanding any other provision of the desert land laws, the property right prior to issuance of patent to the lands in his desert land entry of an entryman who elects to suspend cultivation and improvement operations in accordance with section 1 of this act [first paragraph of this section] and of an entryman whose entry is allowed in accordance with section 2 of this act [second paragraph of this section] shall be a personal right, inheritable but not assignable.

This act shall apply only to applications filed for, or entries made on, public lands in the continental United States, exclusive of Alaska, pursuant to the Act of May 20, 1862 (12 Stat. 392; 43 U.S.C., ch. 7), as amended and supplemented, and pursuant to Act of March 3, 1877 (19 Stat. 377; 43 U.S.C., ch. 9), as amended and supplemented. Nothing in this Act shall apply to applications filed for, or entries made on, public lands pursuant to the Act of June 17, 1902 (32 Stat. 388; 43 U.S.C., ch. 12), as amended and supplemented. [July 30, 1956, ch. 778, §§ 1-4, 70 Stat. 715, 716; 43 U.S.C. §§ 336a-336d.]

§ 51. Issue of patent on final proof — Citizenship requirement as to patentee — Limit as to amount of holding. At any time after filing the declaration, and within the period of four years thereafter, upon making satisfactory proof to the officer designated by the Secretary of Interior of the reclamation and cultivation of said land to the extent and cost and in the manner aforesaid, and substantially in accordance with the plans herein provided for, and that he or she is a citizen of the United States, and upon payment to such officer of the additional sum of one dollar per acre for said land, a patent shall issue therefor to the applicant or his assigns; but no person or association of persons shall hold by assignment or otherwise prior to the issue of patent, more than three hundred and twenty acres of such arid or desert lands, but this section shall not apply to entries made or initiated prior to the approval of this act [March 3, 1891]. Provided, however, That additional proofs may be required at any time within the period prescribed by law, and that the claims or entries made under sections 321 to 323, 325, and 327 to 329 of this title [title 43, U.S.C.] shall be subject to contest, as provided by the law, relating to homestead cases, for illegal inception, abandonment, or failure to comply with the requirements of law, and upon satisfactory proof thereof shall be canceled, and the lands, and moneys paid therefor, shall be forfeited to the United States. [Mar. 3, 1877, ch. 107, § 7, as added Mar. 3, 1891, ch. 561, § 2, 19 Stat. 377; 26 Stat. 1096; 42 Stat. 208; 43 Stat. 1145; 60 Stat. 1100; 43 U.S.C. § 329.]

§ 52. Desert-land entry in addition to homestead entry. — The right to make a desert-land entry shall not be denied to any applicant therefor who has already made an enlarged homestead entry of three hundred and twenty acres: *Provided*, That said applicant is a duly qualified entryman and the whole area to be acquired as an enlarged homestead entry and under the provisions of this section does not exceed four hundred and eighty acres. [Feb. 27, 1917, ch. 134, 39 Stat. 946; 43 U.S.C. § 330.]

§ 53. Reclamation requirements waived in favor of disabled soldiers, etc. — Any entryman under the desert-land laws, or any person

entitled to preference right of entry under section 326 [§ 48 herein] of this title [title 43, U.S.C.], who after application or entry for surveyed lands or legal initiation of claim for unsurveyed lands, and prior to November 11, 1918, enlisted or was actually engaged in the United States Army, Navy, or Marine Corps during the war with Germany, who has been honorably discharged and because of physical incapacities due to service is unable to accomplish reclamation of and payment for the land, may make proof without further reclamation thereof or payments thereon under such rules and regulations as may be prescribed by the Secretary of the Interior, and receive patent for the land by him so entered or claimed, if found entitled thereto: *Provided*, That no such patent shall issue prior to the survey of the land. [Mar. 1, 1921, ch. 102, § 2, as added Dec. 15, 1921, ch. 3, 42 Stat. 348; 43 U.S.C. § 331.]

§ 54. Extension of time for completing work and making proof under desert-land entries. — Any entryman under the above acts who shall show to the satisfaction of the Secretary of Interior or such officer as he may designate that he has in good faith complied with the terms, requirements, and provisions of said acts, but that because of some unavoidable delay in the construction of the irrigating works, intended to convey water to the said lands, he is, without fault on his part, unable to make proof of the reclamation and cultivation of said land, as required by said acts, shall, upon filing his corroborated affidavit with the land office in which said land is located, setting forth said facts, be allowed an additional period of not to exceed three years, within the discretion of the secretary or such officer, within which to furnish proof as required by said acts of the completion of said work.

The Secretary of the Interior may, in his discretion, in addition to the extension authorized by existing law, grant to any entryman under the desert-land laws a further extension of the time within which he is required to make final proof: provided, that such entryman shall, by his corroborated affidavit filed in the land office of the district where such land is located, show to the satisfaction of the secretary that because of unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands as required by law within the time limited therefor; but such extension shall not be granted for a period of more than three years, and this act shall not affect contests initiated for a valid existing reason: provided, that the total extension of the statutory period for making final proof that may be allowed in any one case under this act, and any other existing statutes of either general or local application, shall be limited to six years in the aggregate. [Mar. 28, 1908, ch. 112, § 3, 35 Stat. 52; Apr. 30, 1912, ch. 101, 37 Stat. 106; 60 Stat. 1100; 43 U.S.C. §§ 333, 334.]

§ 55. Further extension of time, and conditions, for perfecting desert-land entries. — The Secretary of the Interior may, in his discretion, extend the time within which final proof is required to be submitted upon

any lawful pending desert-land entry made prior to July first, nineteen hundred and fourteen, such extension not to exceed three years from the date of allowance thereof: provided, that the entryman or his duly qualified assignee has, in good faith, complied with the requirements of law as to yearly expenditures and proof thereof, and shall show, under rules and regulations to be prescribed by the Secretary of the Interior, that there is a reasonable prospect that, if the extension is granted, he will be able to make the final proof of reclamation, irrigation, and cultivation required by law: provided further, that the foregoing shall apply only to cases wherein an extension or further extension of time may not properly be allowed under existing law.

Where it shall be made to appear to the satisfaction of the secretary of the interior, under rules and regulations to be prescribed by him, with reference to any lawful pending desert-land entry made prior to July first, nineteen hundred and fourteen, under which the entryman or his duly qualified assignee under an assignment made prior to the date of this act, has, in good faith, expended the sum of three dollars per acre in the attempt to effect reclamation of the land, that there is no reasonable prospect that, if the extension allowed by this act or any existing law were granted, he would be able to secure water sufficient to effect reclamation of the irrigable land in his entry or any legal subdivision thereof, the secretary of the interior may, in his discretion, allow such entryman or assignee five years from notice within which to perfect the entry in the manner required of a homestead entryman.

Any desert-land entryman or his assignee entitled to the benefit of the last preceding paragraph may, if he shall so elect within sixty days from the notice therein provided, pay to the officer designated by the secretary of interior of the local land office the sum of fifty cents per acre for each acre embraced in the entry, and thereafter perfect such entry upon proof that he has upon the tract permanent improvements conducive to the agricultural development thereof of the value of not less than \$1.25 per acre, and that he has, in good faith, used the land for agricultural purposes for three years and the payment to the receiver, at the time of final proof, of the sum of seventy-five cents per acre: provided, that in such case final proof may be submitted at any time within five (5) years from the date of the entryman's election to proceed as provided in this section, and in the event of failure to perfect the entry as herein provided, all moneys theretofore paid shall be forfeited and the entry canceled. [Mar. 4, 1915, ch. 147, § 5 (part), 38 Stat. 1161; 38 Stat. 1162; Mar. 21, 1918, ch. 26, 40 Stat. 458; 42 Stat. 208; 43 Stat. 1145; 60 Stat. 1100; 43 U.S.C. §§ 335, 337, 338.]

Compiler's notes. The provisions of the three paragraphs of this section are "extended and made applicable to any lawful pending desert-land entry made prior to March fourth, nineteen hundred and fifteen: provided, that

in cases where such entries have been assigned prior to the date of the act the assignees shall, if otherwise qualified, be entitled to the benefit hereof." Act March 21, 1918, ch. 26, 40 Stat. 458.

§ 56. Further extension of time to desert-land entrymen. — The secretary of the interior may, in his discretion, in addition to the extensions

authorized by existing law, grant to any entryman under the desert-land laws of the United States a further extension of time of not to exceed three years within which to make final proof: provided, that such entryman shall, by his corroborated affidavit, filed in the land office of the district where such land is located, show to the satisfaction of the secretary that because of unavoidable delay in the construction of the irrigation works intended to convey water to the land embraced in his entry, he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands as required by law within the time limited therefor: and provided further, that the entryman, his heirs, or his duly qualified assignee, has in good faith complied with the requirements of law as to yearly expenditures and proof thereof, and shall show, under rules and regulations to be prescribed by the secretary of the interior, that there is a reasonable prospect that if the extension is granted he will be able to make the final proof of reclamation, irrigation, and cultivation required by law. [Feb. 25, 1925, ch. 329, 43 Stat. 982; 43 U.S.C. § 336.]

§ 57. Grant of desert land to States authorized. — To aid the public-land States in the reclamation of the desert lands therein, and the settlement, cultivation and sale thereof in small tracts to actual settlers, the Secretary of the Interior with the approval of the President is, as of August 18, 1894, authorized and empowered, upon proper application of the State to contract and agree, from time to time, with each of the States in which there may be situated desert lands as defined by the Act approved March 3, 1877, and the Act amendatory thereof, approved March 3, 1891, binding the United States to donate, grant and patent to the State free of cost for survey or price such desert lands, not exceeding one million acres in each State, as the State may cause to be irrigated, reclaimed, occupied, and not less than twenty acres of each one hundred and sixty acre tract cultivated by actual settlers, as thoroughly as is required of citizens who may enter under the said desert-land law, within ten years from the date of approval by the Secretary of the Interior of the State's application for the segregation of such lands; and if actual construction of reclamation works is not begun within three years after the segregation of the lands or within such further period not exceeding three years, as shall be allowed by the Secretary of the Interior, the said Secretary of the Interior, in his discretion, may restore such lands to the public domain; and if the State fails, within ten years from the date of such segregation, to cause the whole or any part of the lands so segregated to be so irrigated and reclaimed, the Secretary of the Interior may, in his discretion, continue said segregation for a period not exceeding five years, or may, in his discretion, restore such lands not irrigated and reclaimed to the public domain upon the expiration of the ten-year period or of any extension thereof.

Before the application of any State is allowed or any contract or agreement is executed or any segregation of any of the land from the public domain is ordered by the Secretary of the Interior, the State shall file a map of the said land proposed to be irrigated which shall exhibit a plan showing the mode of the contemplated irrigation and which plan shall be sufficient to

thoroughly irrigate and reclaim said land and prepare it to raise ordinary agricultural crops and shall also show the source of the water to be used for irrigation and reclamation, and the Secretary of the Interior may make necessary regulations for the reservation of the lands applied for by the States to date from the date of the filing of the map and plan of irrigation, but such reservation shall be of no force whatever if such map and plan of irrigation shall not be approved.

Any State contracting under this section is hereby authorized to make all necessary contracts to cause the said lands to be reclaimed, and to induce their settlement and cultivation in accordance with and subject to the provisions of this section; but the State shall not be authorized to lease any of said lands or to use or dispose of the same in any way whatever, except to secure their reclamation, cultivation and settlement.

As fast as any State may furnish satisfactory proof according to such rules and regulations as may be prescribed by the Secretary of the Interior, that any of said lands are irrigated, reclaimed and occupied by actual settlers, patents shall be issued to the State or its assigns for said lands so reclaimed and settled: Provided, That said States shall not sell or dispose of more than one hundred and sixty acres of said lands to any one person, and any surplus of money derived by any State from the sale of said lands in excess of the cost of their reclamation, shall be held as a trust fund for and be applied to the reclamation of other desert lands in such State. [Aug. 18, 1894, ch. 301, § 4, 28 Stat. 422; Mar. 3, 1901, ch. 853, § 3; 31 Stat. 1188; Jan. 6, 1921, ch. 10; 41 Stat. 1085; Oct. 21, 1976, P.L. 94-579, Title VII, § 704(a); 90 Stat. 2792; 43 U.S.C. § 641.]

Cross ref. Reclamation of Carey Act lands,
I.C., §§ 42-2001 — 42-2044.

§ 58. Grant of desert land to States authorized. — See § 57 (43 U.S.C. § 641).

§ 59. Patents for reclaimed lands — Limit to one person — Surplus from sale. — See § 57 (43 U.S.C. § 641).

§ 59a. Quitclaim deeds to public-land states. — The Secretary of the Interior shall issue quitclaim deeds to the public-land states for all lands patented to such states under section 4 of the Carey Act of August 18, 1894 (43 U.S.C., sec. 641). He shall also issue a patent for all unpatented public lands within each state now segregated under that Act for which the state issued final certificates or other evidence of right prior to June 1, 1953, or as to which equitable claims to the lands accrued prior to that date (by reason of cultivation or improvement of the lands for agricultural development purposes) for conveyance to the holders of such rights or claims, or to their heirs, successors, or assigns. [Aug. 13, 1954, ch. 727, § 1; 68 Stat. 703; 43 U.S.C. § 641a.]

Cross ref. Reclamation of Carey Act lands,
I.C., §§ 42-2001 — 42-2044.

§ 59b. Filing of application. — The Secretary shall not issue such quitclaim deeds or patents to any state, however, unless that state files a proper application for the transfer of these lands within three years after the date of the enactment of this act. [Aug. 13, 1954, ch. 727, § 2; 68 Stat. 703; 43 U.S.C. § 641b.]

§ 59c. Requirements of application for quitclaim deed. — The application must include a list of all the lands which the state certifies should be transferred under the terms of section 1 of this act, the basis for the certification of each tract included, and a quitclaim or relinquishment of all right, title, and interest in the state to any and all other lands under the Carey Act. Such quitclaim or relinquishment by the state shall not affect any private rights obtained from the state prior to the enactment of this act. [Aug. 13, 1954, ch. 727, § 3, 68 Stat. 703; 43 U.S.C. § 641c.]

§ 59d. Effective date of quitclaim, administration of lands relinquished by states. — The quitclaim or relinquishment of all right, title, and interest by the state to any lands under this act shall not be effective until the secretary has transferred the lands applied for under section 1 of this act. The secretary shall provide for the administration and disposition under the public-land laws of the lands quitclaimed or relinquished by the states pursuant to this act. [Aug. 13, 1954, ch. 727, § 4; 68 Stat. 703; 43 U.S.C. § 641d.]

§ 60. Liens for expenses of reclamation. — Under any law heretofore or hereafter enacted by any state, providing for the reclamation of arid lands, in pursuance and acceptance of the terms of the grant made in section four of an act entitled “An act making appropriations for the sundry civil expenses of the government for the fiscal year ending June thirtieth, eighteen hundred and ninety-five,” approved August eighteenth, eighteen hundred and ninety-four, a lien or liens is hereby authorized to be created by the state to which such lands are granted and by no other authority whatever, and when created shall be valid on and against the separate legal subdivisions of land reclaimed, for the actual cost and necessary expenses of reclamation and reasonable interest thereon from the date of reclamation until disposed of to actual settlers; and when an ample supply of water is actually furnished in a substantial ditch or canal, or by artesian wells or reservoirs, to reclaim a particular tract or tracts of such lands, then patents shall issue for the same to such state without regard to settlement or cultivation: provided, that in no event, in no contingency, and under no circumstances shall the United States be in any manner directly or indirectly liable for any amount of any such lien or liability, in whole or in part. [June 11, 1896, ch. 420, § 1, 29 Stat. 434; 43 U.S.C. § 642.]

§ 61. Temporary withdrawals from application of Carey Act.
[Repealed.]

Compiler's notes. This section (43 U.S.C. 21, 1976, P.L. 94-579, Title VII, § 704a, 90 Stat. 2792), which comprised Act Mar. 15, 1910, ch. 96, 36 Stat. 237, was repealed by Act Oct.

§ 62. Time for reclamation — Failure. — See § 57 (43 U.S.C. § 641).

§ 63. Preference right of Carey Act entrymen to new entry under federal laws. — The Secretary of the Interior, when restoring to the public domain lands that have been segregated to a state under section 4 of the act of August 18, 1894, and the acts and resolutions amendatory thereof and supplemental thereto, commonly called the Carey Act, is authorized, in his discretion and under such rules and regulations as he may establish to allow for not exceeding ninety days to any Carey Act entryman a preference right of entry under applicable land laws of any such lands which such person had entered under and pursuant to the state laws providing for the administration of the grant under the Carey Act and upon which such person had established actual bona fide residence or had made substantial and permanent improvements: provided, that each entryman shall be entitled to a credit as residence upon his new homestead entry allowed hereunder of the time that he has actually lived upon the claim as a bona fide resident thereof. [Feb. 14, 1920, ch. 74, 41 Stat. 407; 43 U.S.C. § 644.]

§ 64. Additional arid lands available to Colorado, Idaho, Nevada, and Wyoming for reclamation. — An additional one million acres of arid lands within each of the States of Colorado, Idaho, Nevada, and Wyoming is made available and subject to the terms of section 641 of this title, and the States of Colorado, Nevada, Idaho and Wyoming are allowed under the provisions of said section said additional area or so much thereof as may be necessary for the purposes and under the provisions of said section. [May 27, 1908, ch. 200, § 1; 35 Stat. 347; Mar. 4, 1911, ch. 285, § 1; 36 Stat. 1417; Aug. 21, 1911, No. 7; 37 Stat. 38; 43 U.S.C. § 645.]

CHAPTER 4

RECLAMATION PROJECTS

SECTION.

- § 65. Boise project — Construction charges suspended.
- § 66. Heyburn and Rupert projects — Rights of previous settlers.
- § 67. King Hill project.
- § 68. King Hill project — Use of moneys advanced by.
- § 69. King Hill project — Deduction from total cost.
- § 70. [Omitted.]

SECTION.

- § 71. Minidoka project — Use of accumulated profits from operation of power plants.
- § 72. Minidoka project — Sales of water from American Falls reservoir.
- § 73. Minidoka project — Deduction from total cost.
- § 74. Minidoka project — Construction charges suspended.
- § 74a to 74n. [Omitted.]

§ 65. Boise project — Construction charges suspended.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

§ 66. Heyburn and Rupert projects — Rights of previous settlers.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

§ 67. King Hill project. — King Hill project, Idaho, shall be subject to the reclamation law so far as applicable and consistent with contract heretofore made between the United States and King Hill irrigation district: provided further, that for the purposes of issuing patent to lands reclaimed, the reclamation effected by the operations of the United States Bureau of Reclamation may be considered by the secretary of the interior as equivalent to reclamation effected by the state of Idaho, under chapter 14 of this title. [July 1, 1918, ch. 113, § 1 (part), 40 Stat. 674, 43 U.S.C. § 595.]

§ 68. King Hill project — Use of moneys advanced by.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

§ 69. King Hill project — Deduction from total cost.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

§ 70. King Hill Project — Construction charges suspended. [Omitted.]

Compiler's notes. This section (44 Stat. 639, P.L. 284, ch. 383) has been omitted from the United States Code.

§ 71. Minidoka project.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

§ 72. Minidoka project — Sales of water from American Falls Reservoir. — No contractor shall secure a right to the use of water from American Falls Reservoir, Minidoka project, except under a contract containing the provision that the contractor shall, as a part of the construction cost, pay interest at the rate of six per cent per annum upon the contractor's proper proportionate share, as found by the secretary, of the moneys advanced by the United States on account of the construction of said reservoir prior to the date of the contract. [June 5, 1924, ch. 264, 43 Stat. 417; 43 U.S.C. § 600.]

§ 73. Minidoka project — Deduction from total cost.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

§ 74. Minidoka project — Construction charges suspended.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

§§ 74a — 74c. Mann Creek project — Construction Repayment Recreation. [Omitted.]

Compiler's notes. These sections (76 Stat. 388, 389, P.L. 87-589, §§ 1-3) have been omitted from the United States Code.

§§ 74d — 74g. Teton Basin project Construction — Repayment Recreation — Water users' contracts. [Omitted.]

Compiler's notes. These sections (78 Stat. 925, P.L. 88-583, §§ 1-4) have been omitted from the United States Code.

§§ 74h — 74n. Upper Snake River project — Construction — Exchange of water — Repayment — Modifications — Charges — Interest — Restrictions on water. [Omitted.]

Compiler's notes. These sections (86 Stat. 967, 968, P.L. 92-514, §§ 301-307) have been omitted from the United States Code.

CHAPTER 5

MISCELLANEOUS PUBLIC LAND PROVISIONS

SECTION.

- § 75. [Repealed.]
- § 76. Rights of occupants or claimants of oil or gas bearing lands — Exceptions to withdrawals.
- § 77. [Repealed.]
- § 78. Preference right over private persons in selection by North Dakota, South Dakota, Montana, Idaho, and Washington.
- § 79. Survey of lands granted to certain western states.
- § 80. Unappropriated lands in vicinity of Snake River — Sale.

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- § 81. Unappropriated lands in vicinity of Snake River — Preference right of purchase.
- § 82. Unappropriated lands in vicinity of Snake River — Reservation of mineral rights.
- § 83. Unappropriated lands in vicinity of Snake River — Reservation of public access.
- § 84. Unappropriated lands in vicinity of Snake River — Regulations — Conflicting claims.

§ 75. Power of president to withdraw lands from settlement, sale or entry. [Repealed.]

Compiler's notes. This section (43 U.S.C. § 141), which comprised Act June 25, 1910, ch. 421, § 1, 36 Stat. 847, was repealed by Acts Oct. 21, 1976, 94-579, Title VII, § 704(a), 90 Stat. 2792.

§ 76. Rights of occupants or claimants of oil or gas bearing lands — Exceptions to withdrawals. — This section and section 141 of this title [title 43, U.S.C.] shall not be construed as a recognition, abridgement, or enlargement of any asserted rights or claims initiated upon any oil or gasbearing lands after any withdrawal of such lands made prior to June 25, 1910: And provided further, That there shall be excepted from the force and effect of any withdrawal made under the provisions of this section and section 141 of this title all lands which are, on the date of such withdrawal, embraced in any lawful homestead or desert-land entry theretofore made, or upon which any valid settlement has been made and is at said date being maintained and perfected pursuant to law; but the terms of this proviso shall not continue to apply to any particular tract of land unless the entry-man or settler shall continue to comply with the law under which the entry or settlement was made. [June 25, 1910, ch. 421, § 2; 36 Stat. 847; Aug. 24, 1912, ch. 369; 37 Stat. 497; Oct. 21, 1976, P.L. 94-579, Title VII, § 704(a); 90 Stat. 2792; 43 U.S.C. § 142.]

§ 77. Enlarged entries of certain nonmineral, nonirrigable lands. [Repealed.]

Compiler's notes. This section (43 U.S.C. § 219), which comprised 36 Stat. 531; 37 Stat. 666; 38 Stat. 957; 39 Stat. 724; 40 Stat. 275, was repealed by Act Oct. 21, 1976, Public Law 94-579, Title VII, § 702, 90 Stat. 2792.

§ 78. Preference right over private persons in selection by North Dakota, South Dakota, Montana, Idaho, and Washington. — The states of North Dakota, South Dakota, Montana, Idaho, and Washington shall have a preference right over any person or corporation to select lands subject to entry by said states by the Act of Congress approved February twenty-second, eighteen hundred and eighty-nine, for a period of sixty days after lands have been surveyed and duly declared to be subject to selection and entry under the general land laws of the United States. [Mar. 3, 1893, ch. 208, 27 Stat. 592; 43 U.S.C. § 861.]

Compiler's notes. Act Feb. 22, 1889, ch. 180, referred to herein, is compiled as 25 Stat. 676.

§ 79. Survey of lands granted to certain western states. — It shall be lawful for the Governors of the States of Washington, Idaho, Montana, North Dakota, South Dakota, Utah, and Wyoming to apply to the Secretary of the Interior or such officer as he may designate for the survey of any township or townships of public land then remaining unsurveyed in any of the several surveying districts, with a view to satisfy the public land grants

made by the several Acts admitting the said States into the Union to the extent of the full quantity of land called for thereby; and upon the application of said governors the Secretary or such officer shall proceed to immediately notify such officer as may be designated by the Secretary of the application made by the governor of any of the said States of the application made for the withdrawal of said lands, and the officer so designated shall proceed to have the survey or surveys so applied for made, as in the cases of surveys of public lands; and the lands that may be found to fall within the limits of such township or townships, as ascertained by the survey shall, be reserved upon the filing of the application for survey from any adverse appropriation by settlement or otherwise except under rights that may be found to exist of prior inception, for a period to extend from such application for survey until the expiration of sixty days from the date of the filing of the township plat of survey in the proper district land office, during which period of sixty days the State may select any of such lands not embraced in any valid adverse claim, for the satisfaction of such grants, with the condition, however, that the governor of the State, within thirty days from the date of such filing of the application for survey, shall cause a notice to be published, which publication shall be continued for thirty days from the first publication, in some newspaper of general circulation in the vicinity of the lands likely to be embraced in such township or townships, giving notice to all parties interested of the fact of such application for survey and the exclusive right of selection by the State for the aforesaid period of sixty days as herein provided for; and after the expiration of such period of sixty days any lands which may remain unselected by the State, and not otherwise appropriated according to law, shall be subject to disposal under general laws as other public lands: And provided further, That the Secretary of the Interior or such officer as he may designate shall give notice immediately of the reservation of any township or townships to the local land office in which the land is situate of the withdrawal of such township or townships, for the purpose hereinbefore provided. [Aug. 18, 1894, ch. 301, § 1, 28 Stat. 394; 43 Stat. 1144; June 26, 1934, ch. 756, § 22, 48 Stat. 1236; 60 Stat. 1100; Sept. 13, 1982, P.L. 97-258, § 5(b), 96 Stat. 1074; 43 U.S.C. § 863.]

§ 80. Unappropriated lands in vicinity of Snake River — Sale.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

§ 81. Unappropriated lands in vicinity of Snake River — Preference right of purchase.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

§ 82. Unappropriated lands in vicinity of Snake River — Reservation of mineral rights.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

§ 83. Unappropriated lands in vicinity of Snake River — Reservation of public access.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

§ 84. Unappropriated lands in vicinity of Snake River — Regulations — Conflicting claims.

Compiler's notes. This section was temporary in character and is no longer carried in the United States Code.

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DECLARATION OF INDEPENDENCE

IN CONGRESS, JULY 4, 1776
THE UNANIMOUS DECLARATION OF THE THIRTEEN
UNITED STATES OF AMERICA

When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the Powers of the earth, the separate and equal station to which the laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed. That whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariable the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of these Colonies, and such is now the necessity which constrains them to alter their former systems of government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these States. To prove this, let facts be submitted to a candid world.

He has refused his assent to laws the most wholesome and necessary for the public good.

He has forbidden his Governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of representation in the Legislature, a right inestimable to them and formidable to tyrants only.

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

He has refused for a long time after such dissolutions, to cause others to be elected; whereby the legislative powers, incapable of annihilation, have returned to the people at large, for their exercise, the State remaining, in the meantime, exposed to all the dangers of invasion from without, and convulsions within.

He has endeavored to prevent the population of these States; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration hither, and raising the conditions of new appropriations of lands.

He has obstructed the administration of justice, by refusing his assent to laws for establishing judiciary powers.

He has made judges dependent on his will alone, for the tenure of their offices and the amount and payment of their salaries.

He has erected a multitude of new offices, and sent hither swarms of officers, to harass our people, and eat out their substance.

He has kept among us, in times of peace, standing armies, without the consent of our legislatures.

He has affected to render the military independent of, and superior to, the civil power.

He has combined with others to subject us to a jurisdiction foreign to our Constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation.

For quartering large bodies of armed troops among us.

For protecting them, by mock trial, from punishment for any murders which they should commit on the inhabitants of these States.

For cutting off our trade with all parts of the world.

For imposing taxes on us without our consent.

For depriving us, in many cases, of the benefits of trial by jury.

For transporting us beyond the seas to be tried for pretended offenses.

For abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these colonies.

For taking away our charters, abolishing our most valuable laws, and altering, fundamentally, the forms of our government.

For suspending our own legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

He has abdicated government here by declaring us out of his protection, and waging war against us.

He has plundered our seas, ravaged our coasts, burnt our towns and destroyed the lives of our people.

He is at this time transporting large armies of foreign mercenaries to complete the works of death, desolation, and tyranny, already begun with circumstances of cruelty and perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the head of a civilized nation.

He has constrained our fellow citizens taken captive on the high seas to

bear arms against their country, to become the executioners of their friends and brethen, or to fall themselves by their hands.

He has excited domestic insurrections amongst us, and has endeavored to bring on the inhabitants of our frontiers, the merciless Indian savages, whose known rule of warfare is an undistinguished destruction of all ages, sexes and conditions.

In every stage of these oppressions, we have petitioned for redress in the most humble terms. Our repeated petitions have been answered only by repeated injury. A prince, whose character is thus marked by every act which may define a tyrant, is unfit to be the ruler of a free people.

Nor have we been wanting in attention to our British brethen. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence. They too have been deaf to the voice of justice and consanguinity. We must, therefore, acquiesce in the necessity which denounces our separation, and hold them, as we hold the rest of mankind, enemies in war, in peace, friends.

We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the World for the rectitude of our intentions, do, in the name and by authority of the good people of these colonies, solemnly publish and declare, that these united colonies are, and of right ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and to do all other acts and things which independent States may of right do. And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honor.

JOHN HANCOCK.

New Hampshire—Josiah Bartlett, Win. Whipple, Matthew Thornton.

Massachusetts Bay—Sam'l Adams, John Adams, Robert Treat Paine, Eldridge Gerry.

Rhode Island—Step. Hopkins, William Ellery.

Connecticut—Roger Sherman, Sam'l Huntington, Win. Williams, Oliver Wolcott.

New York—Win. Floyd, Phil. Livingston, Frans. Lewis, Lewis Morris.

New Jersey—Richd. Stockton, Jno., Witherspoon, Fras. Hopkinson, John Hart, Abra. Clark.

Pennsylvania—Robt. Morris, Benjamin Rush, Benja. Franklin, John Morton, Geo. Clymer, Jas. Smith, Geo. Taylor, James Wilson, Geo. Ross.

Delaware—Caesar Rodney, Geo. Read, Tho. M'Kean.

Maryland—Samuel Chase, Win. Paca, Thos. Stone, Charles Carroll of Carrollton.

Virginia—George Wythe, Richard Henry Lee, Th. Jefferson, Benja. Harrison, Thos. Nelson, Jr., Francis Lightfoot Lee, Carter Braxton.

North Carolina—Win. Hooper, Joseph Hewes, John Penn.

South Carolina—Edward Rutledge, Thos. Hayward, Jr., Thomas Lynch, Jr., Arthur Middleton.

Georgia—Button Gwinnett, Lyman Hall, Geo. Walton.

ORGANIC ACT OF THE TERRITORY OF IDAHO

[12 Stat. L. 808, ch. 117.]

AN ACT

To Provide a Temporary Government for the Territory of Idaho

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3. Secretary of territory — Term of office — Powers and duties.
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5. Qualifications of voters and of holding office.
6. Legislative power — Restrictions — Governor's veto power.
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- shal — Terms of office — Salaries — Duties.
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 12. First legislative assembly — Seat of government.
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 16. Bonds of territorial officers appointed by President.
 17. Treaties with Indians — Duty to keep and observe.

§ 1. Territory of Idaho — Boundaries — Construction of act. —

All that part of the territory of the United States included within the following limits, to wit: Beginning at a point in the middle channel of the Snake River where the northern boundary of Oregon intersects the same; then follow down the said channel of Snake River to a point opposite the mouth of Kooskooskia, or Clearwater River; thence due north to the forty-ninth parallel of latitude; thence east along said parallel to the twenty-seventh degree of longitude west of Washington; thence south along said degree of longitude to the northern boundary of Colorado territory; thence west along said boundary to the thirty-third degree of longitude west of Washington; thence north along said degree to the forty-second parallel of latitude; thence west along said parallel to the eastern boundary of the state of Oregon; thence north along said boundary to the place of beginning. And the same is here by created into a temporary government, by the name of the territory of Idaho: provided that nothing in this act contained shall be construed to inhibit the government of the United States from dividing said territory or changing its boundaries in such manner and at such time as congress shall deem convenient and proper, or from attaching any portion of said territory to any other state or territory of the United States: provided, further, that nothing in this act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such right shall remain inextinguished by treaty between the

United States and such Indians, or include any territory, which, by treaty with the Indian tribes, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any state or territory; but all such territory shall be excepted out of the boundaries and constitute no part of the territory of Idaho, until said tribe shall signify their assent to the President of the United States to be included within said territory, or to affect the authority of the government of the United States, to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent for the government to make if this act had never been passed.

Compiler's notes. United States Revised Statutes, § 1902, gave the territorial boundaries as follows:

§ 1902. All that part of the territory of the United States, included within the following limits, to wit: beginning at a point in the middle channel of the Snake River, where the northern boundary of Oregon intersects the same; then follow down the channel of Snake River to a point opposite the mouth of the Kooskooskia or Clearwater River; thence due north to the forty-ninth parallel of latitude; thence east along that parallel to the thirty-ninth degree of longitude west of Washington; thence south along that degree of longitude to the crest of the Bitter Root Mountains; thence southward along the crest of the Bitter Root Mountains till its intersection with the Rocky Mountains; thence southward along the crest of the Rocky Mountains to the thirty-fourth degree of longitude west of Washington; thence south along that degree of longitude to the forty-second degree of north latitude; thence west along that parallel to the eastern boundary of the state of Oregon; thence north, along that boundary to the place of beginning, is created into a temporary government by the name of the territory of Idaho.

The description in this act included not only what is now the state of Idaho, but also the present state of Montana and almost all of the present state of Wyoming. The boundaries were subsequently changed by the following congressional acts: Act creating the territory of Montana and temporarily annexing a portion of the territory of Idaho to the territory of Dakota, approved May 26, 1864, 13 Stat. 85; act creating territory of Wyoming, approved July 25, 1868, 15 Stat. 178, and the boundaries as finally fixed were embodied in U.S.R.S., § 1902, and confirmed in identical language in the Idaho Constitution, art. 17, § 1, and in slightly different sequence and language in the Idaho Admission Bill.

Originally Idaho was a part of what was known as the Oregon country, to which the United States, Great Britain, Spain and Russia made claims. By treaty between the United States and Spain, February 22, 1819,

Spain ceded to the United States all her rights to this northwestern territory, north of the forty-second parallel, 8 Stat. 252. Russia also relinquished her claims thereto, and south of fifty-four degrees, 40 minutes north latitude by treaty with the United States, April 5, 1824, 8 Stat. 302. On Oct. 20, 1818, the United States and Great Britain agreed by treaty that any territory which might be claimed by either party on the northwest coast of America westward of the Stony Mountains (original name for Rocky Mountains) should be free and open for a term of ten years to the vessels, citizens and subjects of both powers, 8 Stat. 248. This treaty was indefinitely continued in force by another treaty between these countries, Aug. 6, 1827, which provided, however, that either party could, at any time after Oct. 20, 1828, annul it by giving twelve months' notice to the other party, 8 Stat. 360. By joint resolution of the senate and house of representatives, April 27, 1846, the president was authorized to give Great Britain the notice required for the abrogation of the treaty of Aug. 6, 1827, 9 Stat. 109. The joint occupation of the territory between the Rocky Mountains and the Pacific coast was terminated and the boundary line between the possessions of Great Britain and the United States fixed as the forty-ninth parallel of north latitude, Great Britain retaining the island of Vancouver, by treaty between the United States and Great Britain, June 15, 1846, 9 Stat. 869.

All the territory of the United States lying west of the summit of the Rocky Mountains, north of the forty-second degree of north latitude was organized into the territory of Oregon, Aug. 14, 1848, 9 Stat. 323. The territory of Washington was created from a portion of the territory of Oregon, March 2, 1853, and included the present state of Washington and that portion of Idaho and Montana which is north of parallel forty-six and west of the Rocky Mountains, 10 Stat. 172. When Oregon was admitted as a state, Feb. 14, 1859, its present boundaries were fixed and all the rest of the territory of Oregon, including what is now southern Idaho, was made a part of the

territory of Washington, 11 Stat. 383, 384.. Idaho remained a part of the territory of Washington until its organization as a territory by the passage of this organic act.

It is of historical interest to know that the counties of Shoshone, Nez Perce, Idaho and Boise were originally created by the Washington territorial legislature. A history of the various acts concerning these counties is found in Bancroft's Works, vol. XXXI, p. 404.

Cross ref. Boundaries of state, see Idaho

Admission Bill, § 2, and Constitution of Idaho, art. 17, § 1.

Hunting Rights of Indians.

The Organic Act, this section and § 17, and Const., art. 21, § 19 recognize the rights of Nez Perce Indians to hunt upon "open and unclaimed land" reserved by the Indians in the treaty with United States in 1855. *State v. Arthur*, 74 Idaho 251, 261 P.2d 135, cert. denied, 347 U.S. 937, 74 5. Ct. 627, 98 L. Ed. 1087 (1954).

§ 2. Governor — Term of office — Powers. — The executive power and authority in and over said territory of Idaho shall be vested in a governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The governor shall reside within said territory, and shall be commander-in-chief of the militia, and superintendent of Indian affairs thereof. He may grant pardons and respites for offenses against the laws of said territory, and reprieve for offenses against the laws of the United States until the decision of the President of the United States can be made known thereof; he shall commission all officers who shall be appointed to office under the laws of said territory, and shall take care that the laws be faithfully executed.

§ 3. Secretary of territory — Term of office — Powers and duties. — There shall be a secretary of said territory, who shall reside therein, and shall hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all laws and proceedings of the legislative assembly hereinafter constituted, and all the acts and proceedings of the governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly within thirty days after the end of each session, and one copy of the executive proceedings and official correspondence semi-annually, on the first days of January and July in each year, to the President of the United States, and two copies of the laws to the president of the senate and to the speaker of the house of representatives for the use of congress; and in case of the death, removal, resignation, or absence of the governor from the territory, the secretary shall be, and he is hereby, authorized and required to execute and perform all the powers and duties of the governor during such vacancy or absence, or until another governor shall be duly appointed and qualified to fill such vacancy.

§ 4. Legislative department — House and council — Census — Elections. — The legislative power and authority of said territory shall be vested in the governor and legislative assembly. The legislative assembly shall consist of a council and house of representatives. The council shall consist of seven members having the qualifications of voters hereinafter prescribed, whose term of service shall continue two years. The house of representatives shall at its first session, consist of thirteen members possessing the same qualifications as prescribed for the members of the council, and whose term of service shall continue one year. The number of

representatives may be increased by the legislative assembly, from time to time, to twenty-six, in proportion to the increase of qualified voters; and the council, in like manner, to thirteen. An apportionment shall be made as nearly equal as practicable among the several counties or districts for the election of the council and representatives, giving to each section of the territory representation in the ratio of its qualified voters as nearly as may be. And the members of the council and of the house of representatives shall reside in, and be inhabitants of, the district or county, or counties, for which they may be elected respectively. Previous to the first election, the governor shall cause a census or enumeration of the inhabitants and qualified voters of the several counties and districts of the territory to be taken by such persons and in such mode as the governor shall designate and appoint, and the persons so appointed shall receive a reasonable compensation therefor. And the first election shall be held at such time and places, and may be conducted in such manner both as to the persons who shall superintend such election and the returns thereof, as the governor shall appoint and direct; and he shall at the same time declare the number of members of the council and house of representatives to which each of the counties or districts shall be entitled under this act. The persons having the highest number of legal votes in each of said council districts for members of the council shall be declared by the governor to be duly elected to the council and the persons having the highest number of legal votes for the house of representatives shall be declared by the governor to be duly elected members of said house: provided, that in case two or more persons voted for shall have an equal number of votes, and in case a vacancy shall otherwise occur in either branch of the legislative assembly, the governor shall order a new election; and the persons thus elected to the legislative assembly shall meet at such place and on such day as the governor shall appoint; but thereafter the time, place and manner of holding and conducting all elections by the people and the apportioning the representation in the several counties or districts to the council and house of representatives, according to the number of qualified voters, shall be prescribed by law, as well as the day of the commencement of the regular sessions of the legislative assembly: provided, that no session in any one year shall exceed the term of forty days, except the first session, which may continue sixty days.

Compiler's notes. Act of June 20, 1864, ch. 141, 13 Stat. 142, amended the organic act by providing that the governor might reapportion

the Territory of Idaho for members of the legislative assembly.

§ 5. Qualifications of voters and of holding office. — Every free white male inhabitant above the age of twenty-one years, who shall have been an actual resident of said territory at the time of the passage of this act, shall be entitled to vote at the first election, and shall be eligible to any office within the said territory; but the qualifications of voters, and of holding office, at all subsequent elections, shall be such as shall be prescribed by the legislative assembly.

§ 6. Legislative power — Restrictions — Governor's veto power.

— The legislative power of the territory shall extend to all rightful subjects of legislation consistent with the Constitution of the United States and the provisions of this act; but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of nonresidents be taxed higher than the lands or other property of residents. Every bill which shall have passed the council and house of representatives of the said territory shall, before it becomes a law, be presented to the governor of the territory; if he approve, he shall sign it; but if not he shall return it; with his objections, to the house in which it originated, who shall enter the objections at large upon their journal and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, to be entered on the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return; in which case it shall not be a law: provided, that whereas slavery is prohibited in said territory by an Act of Congress of June nineteenth, eighteen hundred and sixty-two, nothing herein contained shall be construed to authorize or permit its existence therein.

§ 7. Local officials, election or appointment — Governor's appointive power. — All township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the governor and legislative assembly of the territory of Idaho. The governor shall nominate and, by and with the advice and consent of the legislative council, appoint all officers not herein otherwise provided for, and in the first instance the governor alone may appoint all said officers, who shall hold their offices until the end of the first session of the legislative assembly, and shall lay off the necessary districts for members of the council and house of representatives, and all other officers.

§ 8. Members of legislature — Restrictions on holding other public office. — No member of the legislative assembly shall hold or be appointed to any office which shall have been created, or the salary or emoluments of which shall have been increased, while he was a member, during the term for which he was elected, and for one year after the expiration of such term; but this restriction shall not be applicable to members of the first legislative assembly; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said territory.

Present Application.

If this section had not previously expired by limitation, it was repealed by § 59-102, as code §§ 49-2 10 and 67-422 1 exempting the provisions of their respective acts from the

provisions of § 59-102 would have been meaningless with this section still in force. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

§ 9. Territorial courts — Jurisdiction and powers. — The judicial power of said territory shall be vested in a Supreme Court, district courts, probate courts, and justices of the peace. The Supreme Court shall consist of a chief justice and two associate justices, any two of whom shall constitute a quorum, and who shall hold a term at the seat of government of said territory annually and they shall hold their offices during a period of four years, and until their successors shall be appointed and qualified. The said territory shall be divided into three judicial districts, and a district court shall be held in each of said districts by one of the justices of the Supreme Court at such times and places as may be prescribed by law; and the said judges shall after their appointments, respectively, reside in the districts which shall be assigned them. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the probate courts and justices of the peace shall be limited by law: provided, that justices of the peace shall have no jurisdiction of any matter in controversy when the title or boundaries of any land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and the said Supreme and district courts, respectively, shall possess chancery as well as common-law jurisdiction. Each district court, or the judge thereof, shall appoint its clerk, who shall also be the register in chancery, and shall keep his office at the place where the court may be held. Writs of error, bills of exceptions, and appeals shall be allowed in all cases from the final decisions of said district courts to the Supreme Court, under such regulations as may be prescribed by law. The Supreme Court, or justices thereof, shall appoint its own clerk, and every clerk shall hold office at the pleasure of the court for which he shall have been appointed. Writs of error and appeals from the final decisions of said Supreme Court shall be allowed and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Court of the United States, where the value of the property of the amount in controversy, to be ascertained by the oath or affirmation of either party or other competent witnesses, shall exceed one thousand dollars, except that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the said Supreme Court created by this act, or of any judge thereof, upon any writs of habeas corpus involving the question of personal freedom. And each of the said district courts shall have and exercise the same jurisdiction, in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under the said constitution and laws; and writs of error and appeal in all cases shall be made to the Supreme Court of said territory, the same as in other cases. The said clerks shall receive, in all such cases, the same fees which the clerks of the district courts of Washington territory now receive for similar services.

Application.

The provisions of this section with reference to terms of office applied only to justices

of the territorial Supreme Court. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

§ 10. United States district attorney and marshal — Terms of office — Salaries — Duties. — There shall be appointed an attorney for said territory, who shall continue in office four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States, and who shall receive the same fees and salary as the attorney of the United States for the present territory of Washington. There shall also be a marshal for the territory appointed, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States, and who shall execute all processes issuing from the said courts, when exercising their jurisdiction as circuit and district courts of the United States; he shall perform the duties, be subject to the same regulations and penalties, and be entitled to the same fees as the marshal of the District Court of the United States for the present territory of Washington and shall, in addition be paid two hundred dollars annually as a compensation for extra services.

§ 11. Territorial officers appointed by President — Salaries — Duties — Members of assembly — Sessions and salaries. — The governor, secretary, chief justice, and associate justices, attorney, and marshal, shall be appointed by the President of the United States by and with the advice and consent of the senate. The governor and secretary to be appointed as aforesaid, shall, before they act as such respectively, take an oath or affirmation, before the district judge or some justice of the peace in the limits of said territory, duly authorized to administer oaths or affirmations by the laws now in force therein, or before the chief justice or some associate justice of the Supreme Court of the United States, to support the Constitution of the United States, and faithfully to discharge duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken, and such certificate shall be received and recorded by the said secretary among the executive proceedings; and the chief justice and the associate justices, and all civil officers in said territory, before they act as such shall take a like oath or affirmation before the said governor or secretary, or some judge or justice of the peace of the territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same to the secretary to be by him recorded as aforesaid; and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The governor shall receive an annual salary of two thousand five hundred dollars, the chief justice and associate justices shall receive an annual salary of two thousand five hundred dollars, the secretary shall receive an annual salary of two thousand dollars; the said salaries shall be paid quarter-yearly from the dates of the respective appointments, at the treasury of the United States; but no payment shall be made until said officers shall have entered upon the duties of their respective appointments.

The members of the legislative assembly shall be entitled to receive four dollars each per day during their attendance at the sessions thereof and four dollars each for every twenty miles traveled in going to and returning from said sessions, estimated according to the nearest usually traveled route, and an additional allowance of four dollars per day shall be paid to the presiding officer of each house for each day he shall preside. And a chief clerk, one assistant clerk, one engrossing and one enrolling clerk, a sergeant-at-arms and door-keeper may be chosen for each house; and the chief clerk shall receive four dollars per day, and the said other officers three dollars per day, during the session of the legislative assembly; but no other officers shall be paid by the United States: provided, that there shall be but one session of the legislative assembly annually, unless on an extraordinary occasion, the governor shall think proper to call the legislative assembly together. There shall be appropriated annually the usual sum to be expended by the governor to defray the contingent expenses of the territory, including the salary of the clerk of the executive department; and there shall also be appropriated annually a sufficient sum, to be expended by the secretary of the territory, and upon an estimate to be made by the secretary of the treasury of the United States to defray the expenses of the legislative assembly, the printing of the laws and other incidental expenses; and the governor and secretary of the territory shall, in the disbursement of all moneys entrusted to them, be governed solely by the instruction of the secretary of the treasury of the United States, and shall, semi-annually, account to the said secretary for the manner in which the aforesaid moneys shall have been expended, and no expenditure shall be made by the legislative assembly for objects not specially authorized by the acts of congress making the appropriations, nor beyond the sums thus appropriated for such objects.

§ 12. First legislative assembly — Seat of government. — The legislative assembly of the territory of Idaho shall hold its first session at such time and place in said territory as the governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the governor and legislative assembly shall proceed to locate and establish the seat of government for said territory at such place as they may deem eligible: provided, that the seat of government fixed by the governor and legislative assembly shall not be at any time changed, except by an act of the said assembly duly passed, and which shall be approved, after due notice, at the first general election thereafter, by a majority of the legal votes cast on that question.

§ 13. Delegate to United States house of representatives — Election — United States laws — Force and effect. — A delegate to the house of representatives of the United States, to serve for the term of two years, who shall be a citizen of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other territories of the United States to the

said house of representatives, but the delegate first elected shall hold his seat only during the term of the congress to which he shall be elected. The first election shall be held at such time and places, and be conducted in such manner as the governor shall appoint and direct; and at all subsequent elections the times, places, and manner of holding elections shall be prescribed by law. The person having the greatest number of legal votes shall be declared by the governor to be duly elected, and a certificate thereof shall be given accordingly. The constitution and all the laws of the United States which are not locally inapplicable shall have the same force and effect within the said territory of Idaho as elsewhere within the United States.

§ 14. School lands. — When the lands in the territory shall be surveyed, under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.

Cross ref. School lands, see Idaho Admission Bill, §§ 4, 5, 14.

§ 15. Judicial districts and judges — Powers of governor. — Until otherwise provided by law, the governor of said territory may define the judicial districts of said territory, and assign the judges who may be appointed for said territory to the several districts, and also appoint the times and places for holding courts in the several counties or subdivisions in each of said judicial districts, by proclamation to be issued by him; but the legislative assembly, at their first day or any subsequent session, may organize, alter, or modify such judicial districts, and assign the judges, and alter the times and places of holding the courts, as to them shall seem proper and convenient.

§ 16. Bonds of territorial officers appointed by President. — All officers to be appointed by the President of the United States, by and with the advice and consent of the senate, for the territory of Idaho, who, by virtue of the provisions of any law now existing, or which may be enacted by congress, are required to give security for moneys that may be entrusted with them for disbursement, shall give such security at such time and in such manner as the secretary of the treasury may prescribe.

§ 17. Treaties with Indians — Duty to keep and observe. — All treaties, laws, and other engagements made by the government of the United States with the Indian tribes inhabiting the territory embraced within the provisions of this act, shall be faithfully and rigidly observed, anything contained in this act to the contrary notwithstanding; and that the existing agencies and superintendencies of said Indians be continued with the same powers and duties which are now prescribed by law, except that the President of the United States may, at his discretion, change the location of the offices of said agencies or superintendencies.

Hunting Rights of Indians.

A Nez Perce Indian could not be prosecuted by the state for killing a deer out of season in National Forest within the boundaries of lands ceded by Indians to United States under Treaty of 1855 although outside the reservation, since reservation in the treaty by

the Indians to hunt upon "open and unclaimed lands" still exists, hence Indians are entitled to hunt at any time of the year in any of the lands ceded to the United States. *State v. Arthur*, 74 Idaho 251, 261 P.2d 135, cert. denied, 347 U.S. 937, 74S. Ct. 627, 98 L. Ed. 1087 (1954).

IDAHO ADMISSION BILL

[26 Stat. L. 215, ch. 656; am. 1998, P.L. 105-296.]

AN ACT

To Provide for the Admission of the State of Idaho into the Union

SECTION.

1. Idaho admitted to union — Constitution ratified.
2. Boundaries of state.
3. Representative in congress — Voters registration law — Officers — Assumption of duties.
4. School lands.
5. Sale or lease of school lands.
6. Grant of land for erection of public buildings.
7. Public lands — Sale — Per cent paid state for school fund.
8. University land grant.
9. Penitentiary granted to state.
10. Agricultural college land grant.
11. Specific land grants for various state institutions.

SECTION.

12. Limitation on land grants and their use.
13. Mineral lands exempted from school land grants — Lieu lands.
14. Selection and survey of lands granted.
15. Appropriation to pay expenses of constitutional convention.
16. United States circuit and district courts.
17. Appeals to Supreme Court of United States — Powers of federal and state courts.
18. Pending actions.
19. Laws of United States — Application.
20. Representation in congress.
21. Territorial officers, continuance in office — Territorial laws, continuance in force.
22. Conflicting laws repealed.

PREAMBLE

Whereas, The people of the territory of Idaho did, on the 4th day of July, 1889, by a convention of delegates called and assembled for that purpose, form for themselves a constitution, which constitution was ratified and adopted by the people of said territory at an election held therefor on the first Tuesday in November, 1889, which constitution is republican in form, and is in conformity with the Constitution of the United States; and,

Whereas, said convention and the people of said territory have asked the admission of said territory into the Union of States on an equal footing with the original states in all respects whatever. Therefore,

§ 1. Idaho admitted to union — Constitution ratified. — The state of Idaho is hereby declared to be a state of the United States of America, and is hereby declared admitted into the union on an equal footing with the original states in all respects whatever; and that the constitution which the people of Idaho have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed.

Cited in: Boise City Irr. & Land Co. v. Turner, 176 F. 373 (D. Idaho 1905); Mower v. Bond, 8 F.2d 518 (D. Idaho 1925).

§ 2. Boundaries of state. — The said state shall consist of all the territory described as follows: Beginning at the intersection of the thirty-ninth meridian with the boundary line between the United States and the British possessions; then following said meridian south until it reaches the summit of the Bitter Root Mountains; thence southeastward along the crest of the Bitter Root range and the Continental divide until it intersects the meridian of thirty-four degrees of longitude; thence southward on this meridian to the forty-second parallel of latitude; thence west on this parallel of latitude to its intersection with a meridian drawn through the mouth of the Owyhee River; north on this meridian to the mouth of the Owyhee River; thence down the mid-channel of the Snake River to the mouth of the Clear-water River; and thence north on the meridian which passes through the mouth of the Clearwater to the boundary line between the United States and the British possessions, and east on said boundary line to the place of beginning.

Cross ref. Boundaries of state, see Constitution of Idaho, Art. 17, § 1.

§ 3. Representative in congress — Voters registration law — Officers — Assumption of duties. — Until the next general census, or until otherwise provided by law, said state shall be entitled to one representative in the house of representatives of the United States, and the election of the representative to the fifty-first congress and fifty-second congress shall take place at the time, and be conducted and certified in the same manner as is provided in the constitution of the state for the election of state, district, and other officers in the first instance.

The law of the territory of Idaho for the registration of voters shall apply to the first election of state, district, and other officers held after the admission of the state of Idaho. County and precinct officers elected at the first election held after the admission of the state of Idaho shall assume the duties of their respective offices on the second Monday of January, 1891.

§ 4. School lands. — Sections numbered 16 and 36 in every township of said state, and where such sections or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said state for the support of common schools, such indemnity lands to be selected within said state in such manner as the legislature may provide, with the approval of the secretary of the interior.

§ 5. Sale, lease, or exchange of school land. — (a) Sale. —

(1) In general. — Except as provided in subsection (c), all land granted under this Act for educational purposes shall be sold only at public sale.

(2) Use of proceeds. —

(A) In general. — Proceeds of the sale of school land —

(i) except as provided in clause (ii), shall be deposited in the public school permanent endowment fund and expended only for the support of public schools; and

(ii)(I) may be deposited in a land bank fund to be used to acquire, in accordance with State law, other land in the State for the benefit of the beneficiaries of the public school permanent endowment fund; or

(II) if the proceeds are not used to acquire other land in the State within a period specified by State law, shall be transferred to the public school permanent endowment fund.

(B) Earnings reserve fund. — Earnings on amounts in the public school permanent endowment fund shall be deposited in an earnings reserve fund to be used for the support of public schools of the State in accordance with State law.

(b) Lease. — Land granted under this Act for educational purposes may be leased in accordance with State law.

(c) Exchange. —

(1) In general. — Land granted for educational purposes under this Act may be exchanged for other public or private land.

(2) Valuation. — The values of exchanged lands shall be approximately equal, or, if the values are not approximately equal, the values shall be equalized by the payment of funds by the appropriate party.

(3) Exchanges with the United States. —

(A) In general. — A land exchange with the United States shall be limited to Federal land within the State that is subject to exchange under the law governing the administration of the Federal land.

(B) Previous exchanges. — All land exchanges made with the United States before the date of the enactment of this paragraph are approved.

(d) Reservation 'for School Purposes. — Land granted for educational purposes, whether surveyed or unsurveyed, shall not be subject to preemption, homestead entry, or any other form of entry under the land laws of the United States, but shall be reserved for school purposes only. [As amended 56 Stat. 48, ch. 36, approved February 6, 1942; 63 Stat. 714, ch. 622, approved October 6, 1949; 88 Stat. 1821, Pub. L. 93-562, approved December 30, 1974; 112 Stat. 2822, P.L. 105-296, approved Oct. 27, 1998.]

Compiler's notes. The 1942 amendment changed the words "five years" to "ten years" in the first part of the second sentence of this section.

The 1949 amendment inserted the words "land in the case of an oil, gas, or other hydrocarbon lease, for as long thereafter as such product is produced" in the second sentence.

The 1974 amendment in subsection (a) in the first sentence inserted "Except as provided in subsection (b)," in the second sentence substituted "Such" for "But said," inserted "or a geothermal resource and associated by-products lease" after "hydrocarbon lease," and inserted "in paying quantities or the lessee in good faith is conducting well drilling or construction operations" after "pro-

duced"; and added subsection (b).

The 1998 amendment rewrote this section to the extent that a detailed comparison is impracticable.

Commingleing of Funds.

The fact that the public school income fund contains income from the public school fund does not prevent the legislature from placing specified funds, for the specific purpose of being used for the teachers' retirement system, into the public school income fund and later withdrawing such funds for the use of the teachers' retirement system since such withdrawal would not constitute a withdrawal from the public school fund. Teachers' Retirement Sys. v. Williams, 84 Idaho 467, 374 P.2d 406 (1962).

§ 6. Grant of land for erection of public buildings. — Fifty sections of the unappropriated public lands within said state, to be selected and located in legal subdivisions as provided in section 4 of the act, shall be, and are hereby, granted to said state for the purpose of erecting public buildings at the capital of said state for legislative, executive, and judicial purposes, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings, and the payment of principal and interest on bonds issued for any of the above purposes. [As amended 71 Stat. L. 277, Pub. L. 85-84, approved July 3, 1957.]

Compiler's notes. The 1957 amendment added the words “, including construction, reconstruction, repair, renovation, furnishings, equipment, and any other permanent improvement of such buildings and the acquisition of necessary land for such buildings,

and the payment of principal and interest on bonds issued for any of the above purposes.” It also provided that the section should take effect as of July 3, 1890.

Sec. to sec. ref. This section is referred to in §§ 57-803, 57-811.

§ 7. Public lands — Sale — Per cent paid state for school fund. — Five per cent of the proceeds of the sales of public lands lying within said state which shall be sold by the United States subsequent to the admission of said state into the union, after deducting all the expenses incident to the same, shall be paid to the said state, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said state.

§ 8. University land grant. — The lands granted to the territory of Idaho by the Act of February 18, 1881, entitled, “An act to grant lands to Dakota, Montana, Arizona, Idaho, and Wyoming, for university purposes,” are hereby vested in the state of Idaho to the extent of the full quantity of 72 sections to said state, and any portion of said lands that may not have been selected by said territory of Idaho may be selected by the said state; but said Act of February 18, 1881, shall be so amended as to provide that none of said lands shall be sold for less than \$10 per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said state, and the income thereof be used exclusively for university purposes. The schools, colleges, and universities provided for in this act, shall forever remain under the exclusive control of said state, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university.

Compiler's notes. Act of February 18, 1881, above referred to, appears in 21 Stat. L. 326, ch. 61.

Sec. to sec. ref. This section is referred to in § 57-803.

§ 9. Penitentiary granted to state. — The penitentiary at Boise City, Idaho, and all lands connected therewith, and set apart and reserved therefor, and unexpended appropriations of money therefor, and the personal property of the United States now being in the Territory of Idaho

which has been in use in said territory in the administration of the territorial government, including books and records and the property used at the constitutional convention which convened at Boise City in the month of July, 1889, are hereby granted and donated to the state of Idaho.

Sec. to sec. ref. This section is referred to in §§ 57-803, 57-807.

§ 10. Agricultural college land grant. — Ninety thousand acres of land, to be selected and located as provided in section 4 of this Act, are hereby granted to said state for the use and support of an agricultural college in said state, as provided in the Acts of Congress making donations of lands for such purposes.

Sec. to sec. ref. This section is referred to in § 57-803.

§ 11. Specific land grants for various state institutions. — In lieu of the grant of land for purposes of internal improvement made to the new states by the eighth section of the act of September 4, 1841, which section is hereby repealed as to the state of Idaho, and in lieu of any claim or demand by the said state under the Act of September 28, 1850, and section 2479 of the Revised Statutes, [43 U. S. Code, § 982] making a grant of swamp and overflowed lands to certain states, which grant is hereby declared, is not extended to the state of Idaho, and in lieu of any grant of saline lands to said state, the following grants of land are hereby made, to wit: To the state of Idaho: For the establishment and maintenance of a scientific school, 100,000 acres, for state normal schools, 100,000; for the support and maintenance of the insane asylum located at Blackfoot, 50,000 acres; for the support and maintenance of the state university, located at Moscow, 50,000; for the support and maintenance of the penitentiary, located at Boise City, 50,000 acres; for other state, charitable, education, penal and reformatory institutions, 150,000 acres. None of the lands granted by this act shall be sold for less than \$10 an acre.

Sec. to sec. ref. This section is referred to in §§ 57-803, 57-807.

§ 12. Limitation on land grants and their use. — The state of Idaho shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated and disposed of exclusively for the purpose herein mentioned, in such manner as the legislature of the state may provide.

§ 13. Mineral lands exempted from school land grants — Lieu lands. — All mineral lands shall be exempted from the grants by this act. But if sections 16 and 36, or any subdivision, or portion of any smallest subdivision, thereof, in any township, shall be found by the department of the interior to be mineral lands, said state is hereby authorized and

empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said state, in lieu thereof, for the use and benefit of the common schools of said state.

§ 14. Selection and survey of lands granted. — All lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior from the surveyed unreserved, and unappropriated public lands of the United States, within the limits of the state entitled thereto. And there shall be deducted from the number of acres of land donated by this act for the specific objects to said state the number of acres heretofore donated by congress to said territory for similar objects.

§ 15. Appropriation to pay expenses of constitutional convention. — The sum of \$28,000, or so much thereof as may be necessary, is hereby appropriated, out of any money in the treasury not otherwise appropriated, for defraying the expenses of said convention, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures, and for elections held therefor and thereunder. Any money hereby appropriated not necessary for such purposes shall be covered into the treasury of the United States.

§ 16. United States circuit and district courts. — The said state shall constitute a judicial district, the name thereof to be the same as the name of the state and the circuit and district courts therefor shall be held at the capital of the state for the time being, and the said district shall, for judicial purposes, until otherwise provided, be attached to the Ninth Judicial Circuit. There shall be appointed for said district one district judge, one United States attorney and one United States marshal. The judge of said district shall receive a yearly salary of \$3500, payable in four equal instalments, on the first days of January, April, July and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in the said district, who shall keep their offices at the capital of said state. The regular terms of said courts shall be held in said district, at the place aforesaid, on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both circuit and district courts. The circuit and district courts for said district, and the judges thereof respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and the clerks of the circuit and district courts of said district, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States, and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the state of Oregon.

§ 17. Appeals to Supreme Court of United States — Powers of federal and state courts. — All cases of appeal or writ of error heretofore prosecuted and now pending in the Supreme Court of the United States upon any record from the Supreme Court of said territory, or that may hereafter lawfully be prosecuted upon any record from said court, may be heard and determined by said Supreme Court of the United States; and the mandate of execution or for further proceedings shall be directed by the Supreme Court of the United States to the circuit or district court hereby established within the said state from or to the Supreme Court of such state, as the nature of the case may require. And the circuit, district and state courts herein named shall, respectively, be the successors of the Supreme Court of the territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts, respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the Supreme Court of the territory mentioned in this act, in any case arising within the limits of the proposed state prior to the admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the Supreme Court of the United States as they shall have had by law prior to the admission of said state into the union.

§ 18. Pending actions. — In respect to all cases, proceedings, and matters now pending in the Supreme or district courts of said territory at the time of the admission into the union of the state of Idaho, and arising within the limits of such state, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said Supreme and district courts of said territory; and in respect to all other cases, proceedings, and matters pending in the Supreme or district courts of said territory at the time of the admission of such territory into the union, arising within the limits of said state, the courts established by such state shall, respectively, be the successors of said Supreme and district territorial courts; and all the files, records, indictments, and proceedings, relating to any such cases shall be transferred to such circuit, district and state courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause, or proceeding now pending, or that prior to the admission of the state shall be pending, in any territorial court in said territory, shall abate by the admission of such state into the union, but the same shall be transferred and proceeded with in the proper United States circuit, district, or state court, as the case may be: provided, however, that in all civil actions, causes and proceedings in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States, except upon written request of one of the parties to such action or proceedings filed in the proper court; and, in the absence of such request, such cases shall be proceeded with in the proper state courts.

Jurisdiction of United States District Court.

The United States circuit court for the district of Idaho had jurisdiction of an action pending in the district court of Idaho territory when that territory became a state, between a corporation of Washington territory and a

corporation of Montana territory, and removed to the former court after the two last-named territories had become states, by reason of such diversity of citizenship. *Washington & I.R.R. v. Coeur d'Alene Ry. & Nay. Co.*, 160 U.S. 77, 16 5. Ct. 219, 40 L. Ed. 346 (1895).

§ 19. Laws of United States — Application. — From and after the admission of said state into the union, in pursuance of this act, the laws of the United States not locally inapplicable shall have the same force and effect within the said state as elsewhere within the United States.

§ 20. Representation in congress. — The legislature of the said state may elect two senators of the United States as is provided by the constitution of said state, and the senators and representatives of said state shall be entitled to seats in congress, and to all the rights and privileges of senators and representatives of other states in the Congress of the United States.

§ 21. Territorial officers, continuance in office — Territorial laws, continuance in force. — Until the state officers are elected and qualified under the provisions of the constitution of said state, the officers of the territory of Idaho shall discharge the duties of their respective offices under the constitution of the state, in the manner and form as therein provided; and all laws in force, made by said territory, at the time of its admission into the union, shall be in force in said state, except as modified or changed by this act or by the constitution of the state.

§ 22. Conflicting laws repealed. — All acts or parts of acts in conflict with the provisions of this act, whether passed by the legislature of said territory or by congress, are hereby repealed.

ACTS OF CONGRESS AFFECTING THE TERRITORY AND STATE OF IDAHO

Oct. 20, 1818. Convention with Great Britain regarding territory claimed by United States and Great Britain on northwest coast. 8 Stat. 248, art. 3.

Oct. 24, 1820. Spain ceded all rights in northwest country. 8 Stat. 252.

Apr. 27, 1846. Resolution concerning Oregon Territory. 9 Stat. 109.

June 15, 1846. Treaty with Great Britain in regard to limits west of Rocky Mountains. 9 Stat. 869.

Aug. 14, 1848. To establish the Territorial Government of Oregon. 9 Stat. 323, ch. 177.

Mar. 2, 1853. To establish the Territorial Government of Washington. 10 Stat. 172, ch. 90.

Feb. 14, 1859. Admission of Oregon into Union. 11 Stat. 383, ch. 33. See § 5, incorporating residue of Territory of Oregon into Territory of Washington.

Mar. 3, 1863. To provide a temporary government for Territory of Idaho (Organic Act). 12 Stat. 808, ch. 117.

May 26, 1864. To provide a temporary government for Territory of Montana. 13 Stat. 85, ch. 95.

May 26, 1864. Part of Idaho Territory temporarily transferred to Dakota. 13 Stat. 85, ch. 95, § 18.

May 26, 1864. Before whom oath of judges may be taken. 13 Stat. 90.

June 20, 1864. Organic Act amended. 13 Stat. 142, ch. 141.

June 30, 1864. Post roads established. 13 Stat. 321, ch. 175.

July 2, 1864. Idaho and Nevada to constitute part of surveyor general's district of Colorado. 13 Stat. 353, ch. 210.

July 2, 1864. Erection of telegraph line in territory. 13 Stat. 374, ch. 220.

Mar. 3, 1865. Providing for construction of wagon roads. 13 Stat. 516, ch. 99.

Mar. 3, 1865. Post roads established. 13 Stat. 522, 525, ch. 104.

June 27, 1866. Idaho land district established and office located at Boise City. 14 Stat. 77, ch. 144.

July 26, 1866. Establishing post roads. 14 Stat. 288, ch. 267.

Jan. 22, 1867. Net proceeds of internal revenue for three years to be applied for erection of penitentiary. 14 Stat. 377, ch. 9.

Feb. 18, 1867. Resolution by Senate and House, accepting steam screw sloop of war "Idaho." 14 Stat. 640.

Mar. 2, 1867. Salary of Justices. 14 Stat. 426, ch. 150.

Mar. 2, 1867. Amending Organic Act. 14 Stat. 427, ch. 151.

Mar. 2, 1867. Appropriation for survey of boundary line between Oregon and Idaho. 14 Stat. 466, ch. 167.

Mar. 30, 1868. Post roads established. 15 Stat. 46, ch. 35.

July 25, 1868. Creating Territory of Wyoming. 15 Stat. 178, ch. 235.

July 25, 1868. Post roads established. 15 Stat. 188, ch. 244.

Feb. 19, 1869. U.S. assay office established at Boise City. 15 Stat. 270, ch. 33.

Mar. 1, 1869. Authorizing county commissioners of Ada County to select site for territorial prison. 15 Stat. 282, ch. 55.

Mar. 3, 1869. Session of legislative assemblies to be biennial and appropriations for government. 15 Stat. 300, ch. 121.

Mar. 3, 1869. Post roads established. 15 Stat. 333, ch. 131.

Mar. 3, 1869. Regulating elections of delegates to congress. 15 Stat. 339, ch. 147.

June 17, 1870. Salaries of chief justice and associates fixed at \$3000 per annum. 16 Stat. 152, ch. 130.

July 14, 1870. Post roads established. 16 Stat. 281, ch. 273.

July 15, 1870. Disapproving and annulling acts of legislative assembly respecting (1) tax upon Chinamen, (2) creating office of district attorney, and (3) giving extra pay to officers holding commissions by federal appointment. 16 Stat. 366, ch. 305.

Dec. 13, 1870. Giving probate courts jurisdiction in certain civil and criminal cases, but not in land, chancery, or divorce; appeals, etc. 16 Stat. 395, ch. 1.

Feb. 28, 1871. Post roads established. 16 Stat. 469, ch. 101.

Mar. 3, 1871. Appropriation for marking boundary line between Utah and Idaho, and surveying public lands. 16 Stat. 502, ch. 114.

Apr. 20, 1871. Appropriation for survey of boundary line. 17 Stat. 9, ch. 21.

Jan. 16, 1872. Post roads established. 17 Stat. 25, ch. 6.

May 9, 1872. Regulating elections. 17 Stat. 90, ch. 147.

May 14, 1872. Post roads established. 17 Stat. 104, ch. 159.

June 1, 1872. Corporators of the centennial board of finance. 17 Stat. 204, ch. 259.

Jan. 24, 1873. Control of penitentiary transferred to territory. 17 Stat. 418, 419, ch. 63.

Mar. 3, 1873. Appropriations for surveyor

general, for surveying public lands, and for survey of boundary between Washington and Idaho. 17 Stat. 515, 516, 517, ch. 227.

Mar. 3, 1873. Regarding Nez Perce reservation. 17 Stat. 627, ch. 224.

June 20, 1874. Penitentiary under control of U.S. marshal. 18 Stat. Sess. 1, 112, ch. 332.

June 23, 1874. Appropriations for surveyor general and for surveying public lands. 18 Stat. Sess. 1, 211, 212, ch. 455.

June 23, 1874. Post roads established. 18 Stat. Sess. 1, 258, ch. 470.

Mar. 3, 1875. Appropriations for surveyor general and for surveying public lands. 18 Stat. Sess. 2, 382, 383, ch. 130.

Mar. 3, 1875. Post roads established. 18 Stat. Sess. 2, 488, ch. 158.

Apr. 3, 1876. Post roads established. 19 Stat. 14, ch. 42.

Mar. 3, 1877. Post roads established. 19 Stat. 322, ch. 103.

Mar. 3, 1877. Post roads established. 19 Stat. 338, ch. 103.

Mar. 3, 1877. Desert lands may be entered for reclamation. 19 Stat. 377, ch. 107.

Jan. 14, 1878. Post roads established. 20 Stat. Sess. 1, 21, ch. 7.

June 3, 1878. Authorizing citizens to remove timber from public domain. 20 Stat. Sess. 1, 88, 89, ch. 150.

June 19, 1878. Constitution of legislature, number, pay, districts, etc. 20 Stat. Sess. 1, 193, ch. 329.

June 20, 1878. Utah & Northern Railway company created a corporation. 20 Stat. Sess. 1, 242, ch. 362.

Feb. 4, 1879. Oneida land district established. 20 Stat. Sess. 2, 282, ch. 48.

Mar. 3, 1879. Post roads established. 20 Stat. Sess. 2, 435, ch. 184.

June 18, 1879. Post routes established. 21 Stat. Sess. 1, 21, ch. 27.

May 3, 1880. Post roads established. 21 Stat. Sess. 2, 94, ch. 74.

June 3, 1880. Reapportionment of members of legislature. 21 Stat. Sess. 2, 154, ch. 119.

June 8, 1880. For improvement of Mullan wagon road. 21 Stat. Sess. 2, 166, ch. 135.

June 15, 1880. Establishment of post roads. 21 Stat. Sess. 2, 206, ch. 224.

Feb. 18, 1881. Lands granted for university purposes. 21 Stat. Sess. 3, 326, ch. 61.

Feb. 28, 1881. Post routes established. 21 Stat. Sess. 3, 358, ch. 90.

Mar. 3, 1881. Assisting southeastern Indians to locate on Fort Hall reservation. 21 Stat. Sess. 3, 499, ch. 137.

Mar. 6, 1882. Post routes established. 22 Stat. Sess. 1, 16, ch. 27.

June 27, 1882. Investigation of claims for suppression of Indian hostilities authorized. 22 Stat. Sess. 1, 111, ch. 241.

Aug. 7, 1882. Post routes established. 22 Stat. Sess. 1, 355, ch. 448.

Aug. 4, 1886. Certified copies of certain lost papers may be received in place of originals. 24 Stat. Sess. 1, 217, ch. 893.

May 14, 1888. Latah county organized from Nez Perce county. 25 Stat. Sess. 1, 147, ch. 251.

Sept. 1, 1888. Agreement with Shoshone and Bannock Indians for cession of part of Fort Hall reservation ratified. 25 Stat. Sess. 1, 452, ch. 936.

May 15, 1890. Location of county seat of Shoshone county submitted to vote of people. 26 Stat. Sess. 1, 111, ch. 211.

May 16, 1890. Ratifying Territorial Act providing for wagon road between Mount Idaho and Little Salmon meadows. 26 Stat. Sess. 1, 115, ch. 217.

July 3, 1890. Idaho Admission Bill. 26 Stat. Sess. 1, 215, ch. 656.

Mar. 3, 1891. Permits to cut and remove timber; citizens of Bear Lake County, Idaho. 26 Stat. 1099, ch. 561.

July 26, 1894. Act prescribing limitations of time to complete title under 'Donation Act.' 28 Stat. 122, ch. 163.

Feb. 26, 1895. Act providing for examination of mineral lands in Idaho. 28 Stat. 683, ch. 131.

June 13, 1902. Act to grant certain lands to Idaho. 32 Stat. 330, ch. 1076.

June 17, 1902. Act appropriating the receipts from sale of lands to be used for the construction of irrigation works. 32 Stat. 388, ch. 1093.

June 28, 1906. Act authorizing the patenting of school district lands in Nez Perce County. 34 Stat. 549, ch. 3580.

Jan. 28, 1907. Act providing for donation of obsolete cannon and equipment to the University of Idaho. 34 Stat. 865, ch. 426.

Feb. 2, 1907. Joint resolution granting extension of time to homestead settlers. 34 Stat. 1421.

May 20, 1908. Act authorizing toll bridge over Snake River. 35 Stat. 167, ch. 180.

May 25, 1908. Providing additional lands for Idaho under the Carey Act. 35 Stat. 577, Joint resolution.

June 17, 1910. An act to enlarge homestead acreage. 36 Stat. 531, ch. 298.

June 25, 1910. Act to authorize the President of the United States to make withdrawals of public lands. 36 Stat. 847, ch. 421.

Aug. 8, 1911. An act for the apportionment of Representatives in Congress. 37 Stat. 13, ch. 5.

April 15, 1912. Extending the time of payments due from homesteaders. 37 Stat. 85, ch. 78.

July 19, 1912. Act providing for the sale of Lemhi School and Agency plant and lands of former Lemhi Reservation. 37 Stat. 195, ch. 241.

Aug. 24, 1912. Act authorizing construction

of bridge over Clearwater River. 37 Stat. 494, ch. 362.

Feb. 27, 1913. An act to provide for selection by the state of phosphate and oil lands. 37 Stat. 687, ch. 85.

Nov. 27, 1913. An act to authorize the sale of the steel bridge over the Snake River to the states of Idaho and Washington. 38 Stat. 234, ch. 37.

Apr. 18, 1914. Act to reserve lands and make them a part of Caribou National Forest Reserve. 38 Stat. 346, ch. 63.

May 14, 1914. Act authorizing issuance of patent to Joseph Hodges. 38 Stat. 377, ch. 89.

Sept. 5, 1916. An act to provide for an enlarged homestead. 39 Stat. 724, ch. 440.

Aug. 10, 1917. Act to provide for national security and stimulate agriculture. 40 Stat. 273, ch. 52.

Mar. 3, 1919. Granting citizens of Malheur County, Oregon the privilege of cutting timber. 40 Stat. 1321, ch. 111.

June 30, 1919. Leases of unallotted mineral lands withdrawn from entry under mining laws. 41 Stat. 31, ch. 4.

Oct. 17, 1919. Certain lands added to Idaho National Forest and Payette National Forest, Idaho. 41 Stat. 324, ch. 88.

May 12, 1920. Granting certain lands to the city of Pocatello, protecting water rights. 41 Stat. 596, ch. 181.

May 29, 1920. Relief from certain patents under erroneous survey. 41 Stat. 630, ch. 213.

Mar. 1, 1921. Act to add certain lands to Targhee National Forest. 41 Stat. 1198, ch. 98.

Mar. 1, 1921. Act to grant certain lands to village of Downey, Idaho, to protect water supply. 41 Stat. 1198, ch. 99.

Mar. 1, 1921. Act to add lands to Lemhi National Forest, Idaho. 41 Stat. 1199, ch. 101.

Mar. 1, 1921. Granting lands to city of Sandpoint, Idaho, to protect watershed. 41 Stat. 1197, ch. 97.

Sept. 22, 1922. Authorizing the State of Idaho to exchange public-school lands for government lands. 42 Stat. 1019, ch. 406.

Mar. 3, 1923. An act to save daylight and provide for standard time. 42 Stat. 1434, ch. 216.

Mar. 2, 1925. Authorizing construction of a bridge across Pend d'Oreille River near Newport-Priest River road. 43 Stat. 1092, ch. 384.

Mar. 4, 1925. Consent to agreements between the States of Washington, Idaho, Oregon and Montana on apportionment of waters of Columbia River. 43 Stat. 1268, ch. 534.

Feb. 8, 1926. Granting consent to Oregon and Idaho to construct a bridge across Snake River at Ballards Landing, Oregon. 44 Stat. 6, ch. 17.

Apr. 13, 1926. Authorizing Secretary of Interior to cooperate with Idaho, Montana, Oregon and Washington in allocation of waters

of Columbia River. 44 Stat. 247, ch. 129.

Apr. 17, 1926. Authorizing State of Idaho to exchange public-school lands for government lands. 44 Stat. 302, ch. 160.

June 26, 1926. Time extended for completing bridge across Pend d'Oreille River near Newport-Priest River road crossing Washington and Idaho. 44 Stat. 770, ch. 690.

July 3, 1926. Consent of Congress to agreements between the states of Idaho, Wyoming, Washington and Oregon on apportionment of water from Snake River. 44 Stat. 831, ch. 753.

Feb. 16, 1928. Consent of Congress to Idaho to construct a bridge across Snake River near Swan Valley, Idaho. 45 Stat. 111, ch. 64.

Feb. 16, 1928. Consent to construct a bridge across Snake River near Indian Cove, Idaho. 45 Stat. 111, ch. 65.

Feb. 16, 1928. Consent to construct a bridge across Snake River at Idaho Falls, Idaho. 45 Stat. 117, ch. 82.

Mar. 10, 1928. Legalize bridge across Snake River at Heyburn, Idaho. 45 Stat. 286, ch. 174.

Apr. 10, 1928. Act to add lands to Idaho National Forest. 45 Stat. 415, ch. 338.

May 21, 1928. Authorizing Secretary of Interior to issue land patent to City of Buhl, Twin Falls County, Idaho. 45 Stat. 644, ch. 657.

Dec. 15, 1928. Issuance of perpetual easement of Department of Fish and Game to lands within original boundaries of Nez Perce Indian Reservation, State of Idaho. 45 Stat. 1022, ch. 28, 2d Sess.

Jan. 29, 1929. Act to cede certain lands to the State of Idaho, including John Smiths Lake, for fish-cultural purposes, payment for, minerals reserved, and description. 45 Stat. 1142, ch. 112, 2d Sess.

May 21, 1930. Fish-cultural station in Idaho, established. 46 Stat. 371, ch. 306.

Dec. 16, 1930. Phosphate, etc., lands selection of, U.S.C. title 43, sec. 860, repealed. 46 Stat. 1029, ch. 14.

Jan. 19, 1931. Compacts with Wyoming for settlement of boundary line. 46 Stat. 1039, ch. 41.

Feb. 3, 1931. Claims of certain tribes of Idaho, determined by Court of Claims. 46 Stat. 1060, ch. 101.

Feb. 4, 1931. Fort Hall Indian Reservation, extension of irrigation system to Michaud division. 46 Stat. 1061, ch. 104.

Feb. 14, 1931. Minidoka reclamation project, certain lands on; quitclaimed to Rupert. 46 Stat. 1102, ch. 163.

Feb. 21, 1931. Craters of the Moon National Monument, acceptance of lands in, authorized. 46 Stat. 1206, ch. 272.

Feb. 25, 1932. Cache National Forest, land added to. 47 Stat. 55, ch. 57.

May 4, 1932. Fort Hall Indian Reservation,

desert land laws applicable to ceded lands of. 47 Stat. 146, ch. 164.

June 29, 1932. Columbia River, time extended for compact for apportionment of waters of. 47 Stat. 381, ch. 311.

June 30, 1932. National forest, lands added to. 47 Stat. 474, ch. 332.

July 1, 1932. Fort Sherman Military Reservation conveyed to. 47 Stat. 563, ch. 367.

July 8, 1932. Snake River, compact for division of waters of. 47 Stat. 655, ch. 467.

Feb. 14, 1933. Permit bridge Pend Oreille Lake at Sandpoint. 47 Stat. 805, ch. 61.

Mar. 2, 1933. Boise Barracks Military Reservation, replacement of buildings, waived. 47 Stat. 1424, ch. 188.

May 12, 1933. Agricultural Adjustment Act. 48 Stat. 31.

April 30, 1934. Lands in Idaho, included in national forests. 48 Stat. 649, ch. 172.

May 17, 1934. Boise National Forest, lands added to. 48 Stat. 779, ch. 292.

June 18, 1934. King Hill Irrigation District, conveyance to. 48 Stat. 980, ch. 571.

Feb. 19, 1935. Bridge authorized across Snake River, at Lewiston. 49 Stat. 27, ch. 13.

Aug. 21, 1935. Bear Lake County, timber available to citizens of. 49 Stat. 665, ch. 591.

Aug. 30, 1935. Snake River improvements authorized. 49 Stat. 1038, ch. 831.

Aug. 30, 1935. Preliminary examination authorized of Spokane River. 49 Stat. 1164, ch. 831.

June 5, 1936. Craters of the Moon National Monument, elimination of certain lands from. 49 Stat. 1484, ch. 527.

June 22, 1936. Preliminary examination authorized of various Rivers. 49 Stat. 1596, ch. 688.

June 24, 1936. Pocatello, game management supply depot and laboratory, established. 49 Stat. 1913, ch. 764.

Mar. 4, 1937. Snake River, examination authorized. 50 Stat. 26, ch. 28.

July 5, 1937. Time extended for bridging Snake River, at Lewiston. 50 Stat. 477, ch. 436.

May 11, 1938. Utilization of State services; expenditure of funds. 52 Stat. 345, ch. 193.

May 16, 1938. Snake River, compact with Wyoming for division of waters of; consent given. 52 Stat. 379, ch. 228.

June 28, 1938. Coeur D'Alene, construction of flood control project authorized. 52 Stat. 1222, ch. 795.

June 28, 1938. St. Manes, construction of flood control project authorized. 52 Stat. 1222, ch. 795.

June 28, 1938. Rivers and Harbors, examination authorized. 52 Stat. 1225, ch. 795.

May 31, 1939. Apples produced in, provisions of Agricultural Marketing Act of 1937 made applicable to. 53 Stat. 793, ch. 157.

June 18, 1940. Snake River pumping plant,

funds continued available for construction. 54 Stat. 435, ch. 395.

June 18, 1940. Twin Springs Dam, funds continued available for construction. 54 Stat. 435, ch. 395.

June 28, 1941. Boise project, contracts authorized. 55 Stat. 337, ch. 259.

Feb. 6, 1942. School Lands, leasing of. 56 Stat. 48, ch. 36.

June 5, 1942. Boise National Forest, addition of lands. 56 Stat. 320, ch. 342.

June 5, 1942. Salmon National Forest, addition of lands. 56 Stat. 320, ch. 342.

June 5, 1942. Targhee National Forest, addition of lands. 56 Stat. 320, ch. 342.

Dec. 22, 1944. Flood-control projects authorized. 58 Stat. 902, ch. 665.

Mar. 2, 1945. Navigation and flood-control projects authorized. 59 Stat. 21, ch. 19.

June 26, 1946. Anderson Ranch Reservoir, Boise reclamation project, purchase of improvements or payment of damages for removal of improvements, authorization for. 60 Stat. 313, ch. 496.

July 1, 1946. Transfer of certain lands, etc., to Bureau of Reclamation. 60 Stat. 369, ch. 529.

July 24, 1946. Rivers, etc., preliminary examinations and surveys authorized. 60 Stat. 638, ch. 595.

July 24, 1946. Flood-protection projects, adoption and authorization. 60 Stat. 650, ch. 596.

July 24, 1946. Bear River and tributaries, interstate compact for division of waters, consent of Congress. 60 Stat. 658, ch. 609.

July 31, 1946. Lewiston Orchards project, authorization for construction, etc. 60 Stat. 717, ch. 706.

Aug. 8, 1946. Columbia River, fishery resources, use of State facilities and services, etc., in conservation. 60 Stat. 932, ch. 883.

June 3, 1948. Snake River, interstate compact for diversion of waters, consent of Congress. 62 Stat. 294, ch. 383.

June 15, 1948. Preston Bench project, construction authorized. 62 Stat. 442, ch. 470.

June 16, 1948. Caribou National Forest, revision of boundaries. 62 Stat. 455, ch. 476.

June 24, 1948. Standard Time Act Amendment, carriers permitted to operate on Pacific time. [62 Stat. 646, ch. 631, § 1.]

June 29, 1948. Minidoka project, increase in limitation on construction. 62 Stat. 1126, ch. 754.

June 29, 1948. Palisades project, contract authorization. 62 Stat. 1127, ch. 754.

June 30, 1948. Fort Hall Indian irrigation project, promotion of interests by land acquisitions and exclusions. 62 Stat. 1167, ch. 767.

July 30, 1948. Bannock County, certain conveyances of Oregon Short Line Railroad Company validated. 62 Stat. 1162, ch. 760.

March 21, 1950. Snake River compact, con-

sent and approval of Congress. 64 Stat. 29, ch. 73.

Aug. 28, 1950. Voluntary agreements for coverage of state and local employees under Social Security Act. 64 Stat. 514, ch. 809.

July 28, 1953. Rupert, Idaho, conveyance of certain land to. 67 Stat. 203, ch. 250.

May 7, 1954. Patent issued to state of Idaho for lands relinquished by state under Carey Act Segregation List Numbered 53 for which state final certificates have been issued. 68 Stat. 78, ch. 191.

Aug. 21, 1954. American Falls Reservoir District Numbered 2, amendatory contract authorized. 68 Stat. 762, ch. 785.

Aug. 24, 1954. Black Canyon Irrigation District, amendatory repayment contract. 68 Stat. 794, ch. 909.

Aug. 31, 1954. Michaud Flats Irrigation project, construction, maintenance and operation authorized. 68 Stat. 1026, ch. 1159.

May 19, 1956. Sandpoint, appropriation of \$98,200 in satisfaction of claims against United States for additional costs to city in operation of sewage disposal facilities caused by dam at Alben's Falls. 70 Stat. 160, ch. 312.

July 30, 1956. Riverside Irrigation District, Limited, Secretary of Interior authorized to enter contract for rehabilitation of Riverside canal and relieve from penalties under March 1, 1926. 70 Stat. 731, ch. 793.

Aug. 6, 1956. Little Wood River Reservoir project, Blaine County, authorized. 70 Stat. 1059, ch. 981.

Aug. 14, 1958. Adjustments in lands or interests therein acquired for Abeni Falls Reservoir project. 72 Stat. 603, Public Law 85-646.

Aug. 14, 1958. Extension of boundaries of Targhee and Caribou National Forests. 72 Stat. 607, Public Law 85-651.

July 17, 1959. Exterior boundaries of Boise and Payette National Forests extended. 73 Stat. 218, Public Law 86-92.

Aug. 18, 1959. Purpose of extension of boundaries of Targhee and Caribou National Forests. 73 Stat. 365, Public Law 86-165.

Sept. 16, 1959. Spokane Valley Federal reclamation project, Secretary of Interior authorized to construct and maintain. 73 Stat. 561, Public Law 86-276.

Feb. 20, 1960. Kamiah Day School Reserve held in trust by United States for Nez Perce Tribe. 74 Stat. 4, Public Law 86-386.

Sept. 2, 1960. Nez Perce Reservation, lands in now reserved for agency, school or cemetery purposes held in trust for Nez Perce Tribe of Indians. 74 Stat. 737, Public Law 86-690.

Sept. 2, 1960. Idaho territorial centennial medals, Secretary of the Treasury authorized to furnish to Idaho Territorial Centennial Commission. 74 Stat. 741, Public Law 86-696.

Sept. 14, 1960. Oregon Short Line Railroad Company and Union Pacific Railroad Com-

pany authorized to transfer certain land to Pocatello First Corporation of the Church of Jesus Christ of Latter Day Saints without forfeiture to United States or Indian tribes upon making certain payments to United States. 74 Stat. 1022, Public Law 86-784.

April 24, 1961. Disposition of funds arising from judgment in favor of Nez Perce Tribe of Indians. 75 Stat. 45, Public Law 87-24.

Aug. 17, 1961. Elimination of certain land from Fort Hall Indian irrigation project approved. 75 Stat. 390, Public Law 87-154.

Aug. 17, 1961. Sale of Block 67 of the reclamation townsite of Rupert, Minidoka project authorized. 75 Stat. 388, Public Law 87-151.

Sept. 14, 1961. Funds made available to Nez Perce Tribe. 75 Stat. 505, Public Law 87-232.

Sept. 22, 1961. Avondale, Dalton Gardens and Hayden Lake Irrigation Districts. Repayment of United States over a 40-year-period. 75 Stat. 588, Public Law 87-289.

May 31, 1962. Sale of unclaimed public land by Secretary of Interior authorized. 76 Stat. 89, Public Law 87-469.

Aug. 16, 1962. Mann Creek Federal reclamation project, Secretary of Interior authorized to construct and maintain, repayment in 40 years. 76 Stat. 388, Public Law 87-589.

Sept. 5, 1962. Amendment of law of Sept. 16, 1959 providing for Spokane Valley Federal reclamation project. 76 Stat. 431, Public Law 87-630.

April 26, 1963. Heyburn, Idaho, interest of United States in vacated streets released. 77 Stat. 13, Public Law 88-14. August 15, 1963. Bruces Eddy Dam and Reservoir renamed Dworshak Dam and Reservoir. 77 Stat. 123, Public Law 88-96.

December 23, 1963. Kootenai Tribe of Indians use of unexpended funds appropriated on September 8, 1960 to pay judgment by Indian Claims Commission. 77 Stat. 472, Public Law 88-231.

Sept. 3, 1964. National wilderness preservation system. 78 Stat. 890, Public Law 88-577.

Sept. 7, 1964. Lower Teton division of the Teton Basin Federal reclamation project, Secretary of Interior authorized to construct and maintain, repayment of costs in 50 years. 78 Stat. 925, Public Law 88-583. October 6, 1964. Lewis and Clark Trail Commission established. 78 Stat. 1005, Public Law 88-630.

May 15, 1965. Secretary of the Interior authorized to designate as the Nez Perce National Historical Park various component sites that have exceptional value in commemorating the history of the nation. 79 Stat. 110, Public Law 89-19.

June 14, 1965. Secretary of Agriculture authorized to acquire particular real property to extend the boundaries of the Kaniksu Na-

tional Forest. 79 Stat. 129, Public Law 89-39.

June 17, 1965. Pacific Northwest Disaster Relief Act of 1965. 73 Stat. 612, Public Law 89-41.

June 30, 1965. Mann Creek federal reclamation project, Idaho. Appropriation authorization increase. 79 Stat. 207, Public Law 89-60.

July 4, 1966. Farragut State Park, Boy Scout World Jamboree, 1967, loan of equipment by Defense Department. 80 Stat. 258, Public Law 89-490.

July 29, 1967. Boy Scout XII World Jamboree, 1967, Farragut State Park, authorization for operation of amateur radio station. 81 Stat. 144, Public Law 90-58.

July 13, 1968. Minidoka Federal reclamation project, severance pay for employees on certain projects, nonreimbursable. 82 Stat. 354, Public Law 90-400. September 20, 1968. Farragut State Park, Seventh National Jamboree of Boy Scouts of America. 82 Stat. 852, Public Law 90-501.

Oct. 2, 1968. National wild and scenic rivers system. 82 Stat. 906, Public Law 90-542.

June 23, 1970. East Greenacres Unit, Rathdrum Prairie project, construction, etc., authorization. 84 Stat. 319, Public Law 91-286.

July 10, 1970. Pacific Marine Fisheries Compact, member. 84 Stat. 415, Public Law 91-415.

October 16, 1970. Western Interstate Nuclear Compact, eligible party. 84 Stat. 985, Public Law 91-461.

October 23, 1970. Craters of the Moon National Wilderness Area, designation. 84 Stat. 1105, Public Law 91-504.

December 11, 1970. Nez Perce Tribe of Indians, use of judgment funds. 84 Stat. 1408, Public Law 91-542.

November 18, 1971. Airborne hunting, prohibition. 85 Stat. 480, Public Law 92-159.

December 15, 1971. North Side Pumping Division Extension, Minidoka project, Jerome and Minidoka Counties, water resources development project, feasibility study for potential water resources. 85 Stat. 664, Public Law 92-199.

December 18, 1971. Shoshone-Bannock Tribes of the Fort Hall Reservation, judgment

funds, apportionment. 85 Stat. 737, Public Law 92-206.

August 22, 1972. Sawtooth National Recreation Area, establishment. 86 Stat. 612, 615, Public Law 92-400.

Sept. 29, 1972. Shoshone-Bannock tribes of the Fort Hall Reservation; credit of funds. 86 Stat. 743, Public Law 92-442.

October 18, 1974. Kootenai Tribe, certain lands held in trust by United States. 88 Stat. 1383, Public Law 93-458.

December 26, 1974. Coeur d'Alene, conveyance of rights of United States to certain land. 88 Stat. 1740, Public Law 93-543.

Jan. 3, 1975. Wild and Scenic Rivers Act Amendment of 1974. 88 Stat. 2094, Public Law 93-621.

December 31, 1975. Hells Canyon National Recreation Area, wilderness designation. 89 Stat. 1117, Public Law 94-199.

April 13, 1976. Regional fishery management councils, membership in Pacific Council, functions. 90 Stat. 347, Public Law 92-265.

October 12, 1976. Rapid River, designation as national wild and scenic river. 90 Stat. 2327, Public Law 94-486.

October 12, 1976. Snake River, potential addition to national wild and scenic rivers system. 90 Stat. 2330, Public Law 94-486.

October 21, 1976. Federal land policy and management. 90 Stat. 2744, Public Law 94-579.

Oct. 22, 1976. Alaska Natural Gas Transportation Act of 1976. 90 Stat. 2903, Public Law 94-586.

Dec. 20, 1977. Social Security Amendments of 1977. 91 Stat. 1509, Public Law 95-216.

Feb. 24, 1978. Endangered American Wilderness Act of 1978. 92 Stat. 40, Public Law 95-237.

Aug. 28, 1978. Fishery Conservation and Management Act of 1976, 1978 authorization and appropriations. 92 Stat. 519, Public Law 95-354.

Oct. 25, 1978. Public Rangelands Improvement Act of 1978. 92 Stat. 1803, Public Law 95-514.

Nov. 10, 1978. National Parks and Recreation Act of 1978. 92 Stat. 3467, Public Law 95-625.

COMPILATION AND PUBLICATION OF CODES AND STATUTES AUTHORIZED

§ 1. Code Commission created — Recommendations and appointment of members — Duties. — A Commission is hereby created to be known as the “1947 Idaho Code Commission” (in this Act called “Commission”), to consist of three persons, members of the Idaho State Bar, who are actively engaged in the practice of law, not holders of any public office or position, whose residences are such that they may readily and conveniently meet from time to time as such commission. The members shall be appointed by the Governor within twenty days after the effective date of this Act from a list of seven qualified persons whose names shall be submitted to the Governor by the Board of Commissioners of the Idaho State Bar within fifteen days after the effective date of this Act. The Commission is hereby empowered, directed and authorized to cause to be edited, compiled, annotated, printed, bound (including provision for insertion of pocket supplements) and published the existing codes and statutes of the State of Idaho of permanent and general nature, including enactments of the Twenty-Ninth regular session of the Legislature. At its first meeting the Commission shall organize by selecting one of its members Chairman and another one of its members Secretary. In the event any vacancy occurs in the Commission, the remaining members thereof shall fill such vacancy by appointment of a person possessing the qualifications hereinbefore set forth. [1947, ch. 224, § 1, p. 543.]

§ 2. Compensation and expense of Commission — Employment of assistance. — Each member of the Commission shall receive as compensation for his services the sum of Twenty Dollars (\$20.00) for each day's attendance at meetings of the Commission and shall receive his actual and necessary expenses incurred in performing his duties as such Commissioner. The Commission is hereby authorized to employ and fix the compensation of adequate legal, clerical and other assistance. [1947, ch. 224, § 2, p. 543.]

§ 3. Contract for publication of statutes authorized. — As soon as practicable after appointment, the Commission is authorized, empowered and directed to enter into a contract with the Bobbs-Merrill Company, an Indiana corporation, having its principal office and place of business at Indianapolis, Indiana, for the editing, compilation, annotation, printing, binding and publication of the existing codes and statutes of the State of Idaho of a permanent and general nature, including the Twenty-Ninth regular session of the Legislature, as hereinafter set forth, Provided, however, that if the said corporation shall fail to enter into such contract within a time considered reasonable by the Commission, said Commission is authorized, empowered and directed to enter into such a contract with any other major, responsible law book publishing company. The contract shall

prescribe the specifications for the editing, compilation, annotation, printing, binding and publication of said compilation, the size of type to be used in text and notes, grade and weight of paper to be used, style of page, number (not less than eight nor more than twelve) and content of volumes, binding specifications, including provision for insertion of pocket supplements, and other requirements which shall be set forth in the contract. Such compilation shall contain the Constitution of the United States and of the State of Idaho, the Organic Act of the Territory of Idaho, the Act admitting Idaho into the Union, statutes of the United States relative to the authentication of records, the Rules of the Supreme Court of Idaho, a copy of this Act, and the existing laws of permanent and general nature of the State of Idaho, including the enactments of the Twenty-Ninth session of the Legislature of the State of Idaho, which may be appropriately regrouped in titles, chapters and renumbered sections. The sections of the Idaho Constitution and statutes shall be annotated by notes and references to the decisions of the Supreme Court of the State of Idaho, the Supreme Court of the United States and the Federal Courts, citing or construing the same, and the history of each particular section shall be given and thorough cross references made to related statutory law of this State; there shall be a thorough and complete general index of the compilation and volume indexes. The compilation shall contain also parallel reference tables to the Idaho Code Annotated 1932 and the Acts of the Legislature; also a special index of special laws, and standard tables of mortality, annuity, inheritance tax, and perpetual calendar; and such other ancillaries as the publishers may see fit to include, with the consent of the Commission or as the Commission may require. [1947, ch. 224, § 3, p. 543.]

§ 4. Completion bond. — The publishing company, coincident with its execution of such contract, shall furnish a performance and completion bond, in terms specified by the Commission, in the sum of \$25,000 written in favor of, and to be paid to, the State of Idaho in the event of failure of said publishing company to comply with the terms and conditions of said contract. The premium or expense of such bond shall be paid out of the appropriation herein provided for. [1947, ch. 224, § 4, p. 544.]

§ 5. Number of sets printed — Sale price. — The contract shall provide that such publishing company shall compile, annotate, print or have printed, and bind in such form as may be prescribed by the Commission, one thousand (1000) sets of said compilation for the use of the State of Idaho, and its municipalities or subdivisions at a price stated in the contract but not to exceed Seventy-five Dollars (\$75.00) per set of eight volumes, and Two Dollars (\$2.00) per volume for all volumes in excess of eight, and that it shall receive payment therefor upon delivery and approval of the sets as hereinafter provided. Said publishing company must agree in said contract to sell additional sets to the State of Idaho for the use of this State in lots of twenty-five (25) or more at a price not to exceed the above stated price per set. Said publishing company shall agree in said contract to print or have printed, bind and place on the market a sufficient number of sets to supply

the demand therefor within the State of Idaho at a price of not to exceed Seventy-five Dollars (\$75.00) per set of eight volumes, and Two Dollars (\$2.00) per volume for all volumes in excess of eight, and that it shall have said compilation printed, bound, published and delivered f.o.b. Boise, Idaho on or before December 15, 1948, Provided, however, that if said publishing company cannot make delivery by said date because of conditions beyond its control and shall satisfy the Commission to that effect, the Commission may, but is not required to, extend said delivery date for a period by it deemed reasonable. [1947, ch. 224, § 5, p. 545.]

§ 6. Examination and approval of compilation. — The Commission shall continuously supervise and give directions relating to the plan of titles, chapters and resectioning, annotations, cross references, tables and indexes, form and uniformity of contents and all other matters deemed pertinent relating to such compilation. Said publishing company shall furnish galley and page proofs to the Commission which shall be examined under its direction for the purpose of determining whether or not the compilation meets the requirements of Section 3 of this Act and all of the provisions of the contract provided for herein. [1947, ch. 224, § 6, p. 545.]

§ 7. Certification of compilation — Proclamation of governor. — The compilation shall be known by such name as the Commission shall determine. Upon certificate of the Commission filed with the Secretary of State and the Governor of the State of Idaho that such compilation has been completed, published and approved by the Commission, the Governor shall thereupon make a proclamation announcing its publication, and from and after such proclamation said compilation shall be in force and effect and shall be received in all courts and by all justices, judges, public officers, commissions and departments of the state government and all others as evidence of the statute law of the State of Idaho, and as an authorized compilation of the statutes and codes of Idaho. [1947, ch. 224, § 7, p. 545.]

Compiler's notes. Session Laws 1933, Ch. 1, in regard to I.C.A. 1932, provided:

Section 1. The published compilation and annotation of the codes and statutes of the State of Idaho which has been made, published and proclaimed in pursuance of the provisions of Chapter 213 of the Idaho Session Laws of 1931 shall be and the same is hereby designated and named - Idaho Code Annotated.

Sec. 2. The Idaho Code Annotated may be cited in all the courts of this state as I.C.A. and shall be cited by section number according to the number at the beginning of each section thereof. Approved January 17, 1933.

Session laws 1933, Ch. 6, in regard to I.C.A. 1932, provided:

Section 1. The Idaho Code Annotated as compiled, annotated, published and proclaimed in pursuance of the mandate of Chapter 213 of the 1931 Idaho Session Laws is hereby approved, adopted and declared to be the authorized compilation of the statutes and codes of the State of Idaho.

Sec. 2. An emergency existing therefor, which emergency is hereby declared to exist this Act shall take effect and be in force from and after its passage and approval by the Governor. Approved January 4, 1933.

§ 8. Copyright. — Copyrights of said compilation and the notes, annotations and indexes thereof, shall be taken by and in the name of said publishing company who shall thereafter promptly assign the same to, and thereafter be owned by, the State of Idaho. [1947, ch. 224, § 8, p. 546.]

§ 9. Sale by state. — The State of Idaho shall not sell any of the said sets of compilation so purchased by it, but may exchange the same with exchange libraries of other states or territories. [1947, ch. 224, § 9, p. 546.]

§ 10. Delivery of printed sets of statutes. — Upon approval of said compilation by the Commission, and proclamation by the Governor, said publishing company shall thereupon immediately deliver to the Secretary of State of the State of Idaho at Boise, Idaho, one thousand (1000) sets. The Secretary of State shall keep one hundred twenty-five (125) sets thereof for the use of the members of the Legislature of the State of Idaho during the time the Legislature is in session and shall distribute the remainder among such state boards, commissions, institutions, officers and offices as shall be decided upon by the State Board of Examiners of this State. The Secretary of State shall also furnish to the clerk of the Supreme Court, upon order of the Supreme Court, and to each clerk of the district court, upon order of the district court or board of county commissioners, a sufficient number of sets to supply one to each Supreme Court justice, district judge, probate judge, clerk of the Supreme Court, clerk of the district court, court room, prosecuting attorney and their assistants, sheriff, assessor, treasurer, recorder, superintendent of public instruction and to each qualified justice of the peace in the county, upon receipt of a certificate from such clerk of the district court certifying as to the election and qualification of said justice of the peace, and shall furnish a set to any member of the Twenty-Ninth session of the Legislature, who makes a request for the same. Any remaining sets shall be kept by the Secretary of State for subsequent distribution as may be directed by law or resolution of subsequent sessions of the Idaho Legislature. The sets herein provided to be furnished to each public officer of this State shall remain the property of the State of Idaho and shall be delivered by such officers to their successors. [1947, ch. 224, § 10, p. 546.]

§ 11. Tax levy on actions filed. — The fee of \$2.50 levied upon each and every civil action filed in the office of the clerk of the various district courts of the State of Idaho, upon which a docket fee is now required to be paid, by Session Laws of 1943, Chapter 103, is hereby relieved and continued in full force and effect. Said fee of \$2.50 shall be paid to the clerk at the time of the filing of such action by the party so filing the same, and which fee shall be in addition to the docketing fee now imposed by Sections 1-1107 and 30-270 1 of the Idaho Code Annotated, as amended by Sections 1 and 2 of Chapter 88 of the Session Laws of 1937 (§§ 1-1107, 31-3201), and which fee so collected shall be kept by said clerk in a separate fund and remitted to the State Treasurer of the State of Idaho on the first day of each month, for the purpose of paying the principal and interest on the treasury notes heretofore or hereafter issued under authority of said Session Laws of 1943, Chapter 103, and this law. When the State Treasurer has in the fund herein provided sufficient moneys to pay the unpaid principal and interest of all the treasury notes so issued, as and when the same become due and payable, the State Treasurer shall certify such fact to each clerk of the district court and, upon receipt of such certificate by such clerk, the \$2.50 fee herein levied shall no longer be collected. [1947, ch. 224, § 11, p. 547.]

Compiler's notes. S.L. 1943, ch. 103, referred to herein, was temporary in nature and is not compiled in the Idaho Code.

§ 12. Pledge of tax or fees. — The treasury notes heretofore or hereafter issued and sold as provided by said Session Laws of 1943, Chapter 103, and this law, shall constitute an irrevocable and irrepealable contract between the State of Idaho and the owner of any of said treasury notes, that the taxes and/or fees pledged for payment thereof, provided by said Session Laws of 1943 and by this law, including all amounts transferred as in Section 11 hereof provided, shall not be reduced so long as any of said treasury notes remain outstanding and unpaid, and that the State will cause said taxes and/or fees to be promptly collected and set aside and applied to pay said treasury notes and interest according to the terms thereof. Any holder of any of said treasury notes so issued, or any person or officer being a party in interest, may, either at law or in equity by suit, action or mandamus, enforce and compel the performance of the duties required by said Session Laws of 1943, Chapter 103, and this law, of any officer or person herein mentioned. [1947, ch. 224, § 12, p. 547.]

§ 13. Code fund created. — There is hereby created in the hands of the State Treasurer, a fund to be known as the "1947 Idaho Code Fund." All funds in the hands of the State Treasurer credited to the "1943 Idaho Code Fund" are hereby transferred, appropriated to and made a part of, the "1947 Idaho Code Fund." [1947, ch. 224, § 13, p. 548.]

§ 14. Issuance of treasury notes. — The Commission is hereby authorized to anticipate the proceeds of the collection of any or all of the taxes and/or fees heretofore provided for by said Session Laws of 1943, Chapter 103, and herein provided for, and is hereby authorized and directed to cause to be issued "1947 Idaho Code Fund Treasury Notes", bearing such rate of interest, not exceeding 3 percent per annum, as the Commission may determine, in such amounts which, together with the moneys transferred from the "1943 Idaho Code Fund" to the "1947 Idaho Code Fund" shall not exceed in the aggregate the sum of One Hundred Thousand Dollars (\$100,000). Said additional treasury notes may be issued in serial form and matured at stated periods not exceeding ten years from the date of issuance, shall be signed by the Chairman of the 1947 Idaho Code Commission attested by the Secretary thereof, shall be countersigned by the Treasurer of the State of Idaho, and shall be in such form as approved by the Attorney General of the State of Idaho. [1947, ch. 224, § 14, p. 548.]

§ 15. Sale of treasury notes. — Said treasury notes shall be sold by the State Treasurer to the highest bidder for cash at not less than par and accrued interest at such times and in such amounts as may be determined by the Commission, after advertising the time and place of sale in such manner as the Commission shall determine; Provided, said treasury notes or any part thereof may be sold by the Treasurer at any time at private sale, without advertisement, for not less than par and accrued interest. The State

Treasurer may, with the approval of the Commissioner of Public Investments and other officials whose approval is required by law for investment of public funds, purchase any or all of such treasury notes at par and accrued interest for such investment without their having been advertised or offered for sale, or after rejection of bids for all or part of any issue. [1947, ch. 224, § 15, p. 548.]

§ 16. Proceeds of sale, how handled. — The proceeds of the sale of said treasury notes shall be placed to the credit of the "1947 Idaho Code Fund" in the State Treasury, except such amount as may be required to be paid as accrued interest, which amount shall be credited to a special interest fund for payment of interest on such treasury notes. The expenses incurred by the State Treasurer in the preparation and sale of said treasury notes shall be paid out of the "1947 Idaho Code Fund." The balance of such proceeds and all moneys transferred thereto and to be paid therein shall be used exclusively for the purpose for which said indebtedness is authorized by this law, and shall be paid out on warrants drawn by the State Auditor supported by vouchers of the Commission.

The State Treasurer shall keep separate accounts of all moneys collected as taxes and/or fees heretofore imposed by Session Laws of 1943, Chapter 103, and this law, for the payment of the interest required to be paid on said treasury notes and shall provide a sinking fund for the payment of said treasury notes, heretofore issued and outstanding pursuant to Session Laws of 1943, Chapter 103, and issued pursuant to this law, and made available for the purposes, and from the effective date, of this Act. [1947, ch. 224, § 16, p. 548.]

§ 17. Appropriations. — There is hereby appropriated out of said "1947 Idaho Code Fund", commencing with the passage and approval of this Act, the sum of Eighty-three Thousand Dollars (\$83,000) or so much thereof as may be necessary, to pay for said code compilation, and the sum of Seventeen Thousand Dollars (\$17,000) or so much thereof as may be necessary, to pay the compensation and expenses of the Commission and the assistance by it employed, provided, however, that if the contract for such compilation is for a sum less than Eighty-three Thousand Dollars (\$83,000), any balance remaining shall be added to the said Seventeen Thousand Dollars (\$17,000) expense appropriation and may be expended by the Commission if by it deemed necessary, for expenses incurred in connection with the compilation of said code. [1947, ch. 224, § 17, p. 549.]

§ 18. Exemption from Standard Appropriations Act. — The appropriations made in this Act are expressly exempted from the provisions of the Standard Appropriations Act of 1945, Chapter 48, Session Laws of 1945 (§§ 67-3601 — 67-3614) and from the provisions of Section 65-3409, Idaho Code Annotated, as amended by Chapter 74, Session Laws of 1941 (§ 67-3509), and from the provisions of Chapter 75, Session Laws of 1941, as amended by Chapter 101, Session Laws of 1943 (§§ 67-3516 — 67-3523). [1947, ch. 224, § 18, p. 549.]

§ 19. Separability clause. — The provisions of this law are hereby declared separable, and if any section, clause or phrase hereof is hereafter declared unconstitutional the same shall not affect the validity of the remaining portions of this law. [1947, ch. 224, § 19, p. 549.]

§ 20. Repealing clause. — Sections 1, 2, 3, 4, 5, 6, 7, 13, 14 and 15 of Session Laws 1943, Chapter 103, are hereby expressly repealed, and the Commission created by said law is hereby abolished. [1947, ch. 224, § 20, p. 550.]

§ 21. Validating and saving clause. — All 1943 Idaho Code Fund treasury notes issued under and by virtue of Session Laws 1943, Chapter 103, are hereby expressly validated, legalized, and ratified, and no right, privilege or interest secured by or vested in any holder of any such treasury note or notes shall in anywise be impaired or abrogated by reason of the repeal provisions of Section 20 hereof, nor by any other provision of this Act. [1947, ch. 224, § 21, p. 550.]

§ 22. Declaring an emergency. — An emergency existing therefor, which emergency is hereby declared to exist, this Act shall take effect and be in force from and after its passage and approval.

Approved March 15, 1947. [1947, ch. 224, § 22, p. 550.]

PARALLEL REFERENCE TABLES

Am § NE = amendment of section not enacted

Appn. = appropriation

App./S. = Application of other code section

ch. or c. = chapter

Const. = constitutionality

Eff. = effective date

Emer. = emergency

EE = emergency and effective date

(E. S.) = extra session

Exp. = Expiration

Hist. D = Historical Documents

Init. Meas. = Initiative measure

Leg. = legalizing act

Legis. Int. = Legislative Intent

n. = note

PR = partial repeal

p. = page

Ref. = referendum

Ren. = renumbered

R = repealed

Rplg. = repealing

Sav. Cl. = saving clause

Sep. = separability

Sev. = severability

Spec. = special act or section

S. = Superseded

Temp. = temporary

Unconst. = Unconstitutional

Val. = Validation

Veto = Vetoed

* = added by session laws subsequent to 1919 or 1932

** = amended and redesignated

*** = added by subsequent law

**** = not approved by governor.

COMPILED STATUTES OF 1919

C. S. 1919	Herein	C. S. 1919	Herein	C. S. 1919	Herein	C. S. 1919	Herein
1-3	(omitted)	36	31-132	69	R '96, ch. 28,	102	67-410
4	67-101	37	31-133		§ 28	103	67-411
5	31-101	38	31-134	70	58-701	104	67-501
6	31-102	39	31-135	71	58-702	105	67-502
7	31-103	40	31-136	72	67-301	106	67-503
8	31-104	41	31-137	73	67-302	107	67-504
9	31-105	42	31-138	74	67-303	108	67-505
10	31-106	43	31-139	75	67-401	109	67-506
11	31-107	44	31-140	76	67-402	110	67-507
12	31-108	45	31-141	77	67-403	111	67-508
13	31-109	46	31-142	78	67-404	112	67-509
14	31-110	47	31-143	79	67-405	113	67-510
15	31-111	48	31-144	80	34-2101	114	R '79, c. 34,
16	31-112	49	31-145	81	34-2102		§ 1
17	31-113	50	31-146	82	34-2103	115	67-512
18	31-114	51	67-201	83	34-2104	116	67-513
19	31-115	52	67-202 R '65	84	34-2105	117,	R '69,
20	31-116		(E.S.), ch. 2,	85	34-2106	118	ch. 256, § 1
21	31-117		§ 1	86	34-2107	119	R '47, ch. 3,
22	31-118	53	R '65, ch. 4,	87	34-2108		§ 4
23	31-119		§ 1	88	34-2109	120 to	R '69,
24	31-120	54	67-204	89	34-2110	126	ch. 256,
25	31-121	55-64	R '67,	90	34-2111		§ 1
26	31-122		ch. 51, § 1	91	34-2112	127	67-801
27	31-123	65	1-811	92	34-2113	128	67-802
28	31-124	65A*	R '67,	93	34-2114	129	67-803
29	31-125		ch. 51, § 1	94	34-2115	130	67-804
30	31-126	66	34-1901	95	34-1816	131	67-805
31	31-127	67	34-1902 R '81	96	34-1817	132	67-901
32	31-128		(E.S.), ch. 1,	97	34-1818	133	67-903
33	31-129	68	§ 1	98	34-1819	133(a)	R '31,
34	31-130		34-1903 R '81	99	67-407		ch. 131, § 3
35	31-131		(E.S.), ch. 1,	100	67-408	134	67-904
			§ 2	101	67-409	135	67-906
		69	34-1904				

C. S. 1919	Herein	C. S. 1919	Herein	C. S. 1919	Herein	C. S. 1919	Herein
136	67-907	189	ch. 90, § 1	241	67-2017	302	67-1034
137	67-908 R '93,	190	1-402	242	67-2018	303	67-1035
	ch. 186, § 1	191	1-403	243	67-2019	304	67-2723
138	67-910	192	1-404	244	67-2020	305	67-2724
139	R '79,	193	1-405	245	67-2021	306	67-2725
	ch. 105, § 6	194	1-406	246	67-2022	307	67-2726
140	67-912	195	1-407	247	67-2023	308 to	R '69,
141	67-1001	196	1-408	248	67-2024	317	ch. 331, § 12
142	67-1002	197	R '77,	249	67-2101	318	67-2737
	R '94, ch. 181,		ch. 178, § 11	250	67-2401	319	67-2738
	§ 6	198	1-410 R '93,	251	67-2402	320	R '83, ch. 38,
143	67-1003		ch. 90, § 1	252	67-2403		§ 10
144	67-1004	199	1-501	253 to	R '74,	321	R '77,
145	67-1005	200	1-502	257	ch. 40, § 1		c. 133, § 1
146	67-1006	201	1-503	258	R '69,	322	67-2741
147	67-1007	202	1-504		ch. 466, § 15	323	67-2742
148	R '21,	203	1-505	259	67-2410	324	67-2743
	ch. 125,	204	1-506	260,	R '74,	325	67-2744
	§ 1	205	1-507	261	ch. 40, § 1	326	67-2745
149	67-1008	206	1-508	262	R '71,	327	67-2746
150	67-1010	207	1-601		ch. 136, § 53	328	67-2747
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175	67-1218	225	ch. 3, § 1	289	ch. 24, § 1	341	R '69,
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179	67-1402	229	67-1704	290 to	67-1026 —	345	67-3201 R '85,
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186	67-1507	236	67-2011		R '94, ch. 181,	349	ch. 126, § 1
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366	ch. 67, § 10	463	59-910	623 to	R '70,	851	ch. 125, § 105
367 to	R '39,	464	59-911	633	ch. 140, § 213	852	33-414
377	ch. 143, § 20	465	59-912	634 to	R '70	853	R '63,
378	R '74,	466	59-913	640	c. 140, §- 214		ch. 13, § 236
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380	ch. 143, § 20		ch. 68, § 1	643	34-1501	902 to	R '63,
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392	59-207	480	59-1010	656	31-207		ch. 205,
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409	59-505		ch. 228, § 2		§ 1; R '27,	1004	33-2203
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1030	44-1307	1127	ch. 102, § 9	1286	§ 8	1344 to	R '49,
1031	44-1308	1128 to	R '63,	1287 to	R '49,	1346	ch. 39, § 1
1032	33-2501	1132	ch. 168, § 9	1289	ch. 4, § 1	1347	40-612 R '85,
1033	33-2502	1133	R '29,	1290	67-4401		ch. 253, § 1
1034	33-2503		ch. 184, § 7	1291	67-4402	1348,	R '50 (E. S.),
1035	33-2602	1134 to	R '63,	1292	67-4403	1349	ch. 87, § 24
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1062	33-2807		ch. 98, § 17		R '85, ch.	1366 to	40-901 to
1063	33-2808	1197	R '29,		253, § 1	1373	40-908
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1066	33-2813	1199 to	R '31,		R '85,	1374 to	40-910 to
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1488	40-1508 R '85, ch. 253, § 1	1506 to	40-1610 to 40-1628 R '85, ch. 253, § 1	1581	40-2211 R '83, ch. 179, § 4	1626	R '49,
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1499	40-1604 R '85, ch. 253, § 1	1537 to	40-1641 to 40-1643 R '85, ch. 253, § 1	1594	S. 49-110 R '27, ch. 244, § 38	1639	§ 1
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		1561	40-1644 to 40-1654 R	1617	49-115 **49-429 R '27, ch. 244, § 38	1662	R '55,
		1562	40-1644 to 40-1654 R	1618	49-115 **49-429 R '27, ch. 244, § 38	1663	ch. 176, § 12
		1563	40-1644 to 40-1654 R	1619	49-115 **49-429 R '27, ch. 244, § 38	1664	R '55,
		1564	40-1644 to 40-1654 R	1620	49-115 **49-429 R '27, ch. 244, § 38	1665	ch. 176, § 13
		1565	40-1644 to 40-1654 R	1621	49-115 **49-429 R '27, ch. 244, § 38	1666	R '67,
		1566	40-1644 to 40-1654 R			1667	ch. 54, § 8
		1567	40-1644 to 40-1654 R			1668	R '67,
		1568	40-1644 to 40-1654 R			1669	ch. 54, § 9
		1569	40-1644 to 40-1654 R			1670	
		1570	40-1644 to 40-1654 R			1671	
		1571	40-1644 to 40-1654 R			1672	
		1572	40-1644 to 40-1654 R			1673	
		1573	40-1644 to 40-1654 R			1674	
		1574	40-1644 to 40-1654 R			1675	

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1725	R '67,	1792	37-2510	1856	R '50	1932	ch. 71, § 1
	ch. 54, § 10	1793	37-2511		(1st E. S.),	1933	R '43,
1726	37-322	1794	37-2512		ch. 50,		ch. 71, § 1
1727	R '55,	1795	37-2513		§ 26; '51,	1934	25-1301
	ch. 176, § 17	1796	39-1801 R '91,		ch. 250, § 27	1935	25-1302
1728	37-324		ch. 296, § 1	1857	R '63,	1936	26-1303
1729	37-325	1797	39-1804 R '91,		ch. 131, § 1	1937	R '73, c. 168,
1730	37-326		ch. 296, § 1	1858	25-221		§ 22
1731	R '86, ch. 101,	1798	R '76,	1859	25-222	1938	25-1305
	§ 2		ch. 259, § 1	1860	R '50 (E.S.),	1939	R '39, ch.
1732	37-328	1799	39-1806 to		ch. 50,		268, § 17 and
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	§ 1	1805	'91, ch. 296,		250, § 27		§ 12
1733	37-329		§ 1	1869	25-223	1940	R '73,
1734	37-331	1806	R '25,	1870	25-224		c. 168, § 22
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	§ 1	1807	R '76,	1872	25-226		§ 2
1735	37-332		ch. 259, § 1	1873	25-227	1942	R '73, c. 168,
1736	37-333	1808	39-1813 R '91,	1874	25-228		§ 22
1737	R '29,		ch. 296, § 1	1875	R '95, ch. 57,	1943	R '49,
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1738	37-506		ch. 296, § 1	1876	25-230	1944	**25-1150
1739	R '25,	1810	39-1803 R '91,	1877	25-231	1945	R '73, c. 168,
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1740	37-507	1811	39-1814 R '91,		ch. 109, § 1	1946	25-1404
1741	R '70,	1812	ch. 142, § 1	1879	R '25,	1947	25-1601
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1742	R '23,	1813,	R '76,	1880	R '27,	1949	ch. 51, § 2
	ch. 121, § 11	1814	ch. 259, § 1		ch. 109,	1950,	R '43,
1743	R '25,	1815	39-1819 R '91,	1886	§ 1	1951	ch. 113, § 1
	ch. 224, § 16		ch. 296, § 1	1887	R '53,	1952,	R '43
1744	37-509	1816	R '25,		ch. 5,	1953,	ch. 113,
1745	37-901 to		ch. 24, § 5	1901	§ 1	1954	§ 1
to	37-907	1817	39-1820 R '91,	1902	25-716	1955	25-2001
1751	R '91, ch. 30,		ch. 296, § 1	1903	R '53,	1956	35-101
	§ 6	1818	39-2001		ch. 5,	1957	35-102
1752	37-2101	1819	39-2002	1907	§ 1	1958	35-103
1753	37-2102	1820	39-2003	1908	25-901 to	1959	35-104
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1755	R '57,		'72,	1910	'82, ch. 31,	1961	35-106
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1769	§ 8		54-411 R	1911	25-2806	1963	35-108
1770	R '29,	1831	'92, ch. 229,	1912	25-2805	1964	35-109
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1771	37-1916	1832	R '31,		ch. 13, § 1	1966	35-111
1772	37-1917		ch. 158, § 9	1914	25-1001	1967	35-112
1773	37-1918	1832A	54-412 to	1915	25-1002	1968	35-201
1774	37-1919	to	54-421 R	1916	25-1003	1969	35-202
1775	37-1920	1839B	'92, ch. 229,	1917	25-1201 R '88,	1970	25-2101
1776	37-1921	1840	§ 1		ch. 75, § 1	1971	25-2102
1777	37-1922	1841	25-201	1918	**25-1140	1972	25-2103
1778	37-1923	1842	25-202	1919	**25-1142	1973	25-2104
1779	37-1924	1843	25-204	1920	**25-1143	1974	25-2105
1780	37-1925	1844	25-205	1921	**25-1144	1975	25-2106
1781	37-1926	1845	25-206	1922	R '51,	1976	25-2107
1782	37-1927	1846	25-207		ch. 108, § 2	1977	25-2108
1783	37-2501	1847	25-208	1923	**25-1145	1978	25-2109
1784	37-2502	1848	25-209	1924	**25-1146	1979	25-2110
1785	37-2503	1849	25-210	1925	**25-1147	1980	25-2111
1786	37-2504	1850	25-211	1926	**25-1148	1981	25-2112
1787	37-2505	1851	25-212	1927	R '73,	1982	25-2113
1788	37-2506	1852	25-213		c. 168,	1983	25-2114
1789	37-2507	1853	25-214	1930	§ 22	1984	25-2115
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1791	37-2509	1855	25-216	1932	R '43,	1986	25-2117

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to	c. 168,		ch. 297, § 2	2116	R '49,	ch. 131, § 23	
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1995	R '76,	2065A	R '74,	2123	§ 35	ch. 131, § 23	
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2002	ch. 88, § 1		ch. 131, § 13	2126	ch. 102, § 35	2198	R '70,
2003	R '27,	2069	22-1907 to	2127	R '35,	to	ch. 70,
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2004	R '76,	2071	R '88, ch. 297,		§ 11;	2208	R '21,
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2010	§ 1	2072	R '35,		ch. 102,	2217	§ 21
2011	25-2401		ch. 131, § 13		§ 35	2218	R '61,
2012	25-2402	2073,	22-1910,	2128	R '49,	to	ch. 233,
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			'88,	2136D	§ 35	2222	R '61,
2014	25-2404		ch. 297, § 7	2137	R '69,	ch. 161, § 1	
2015	25-2406	2075	R '35,	to	ch. 84,	2223	R '61,
2016	25-2407		ch. 131, § 13	2140	§ 14	ch. 161, § 3	
2017	25-2408	2076	22-1912 R '88,	2141	R '80,	2224	R '61,
2018	25-2409		ch. 297, § 7	to	ch. 334,	ch. 161, § 5	
2019	R '51,	2077	22-1913	2154	§ 1	2225	54-304
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2030	§ 9	to	22-1921	to	ch. 91,	ch. 161, § 7	
2031	22-701	2085	R '88, ch. 297,	2163	§ 1	2227	54-306
2032	22-702		§ 10	2164	R '45,	2228	R '61,
2033	22-703	2086	R '29,		ch. 104, § 4	ch. 161, § 9	
2034	22-704	to	ch. 147,		R '72,	54-308	
2035	22-705	2090	§ 1	2165	to	2229	R '29,
2036	22-706	2091,	R '63,	to	ch. 91,	2230	ch. 114, § 2
2037	22-707	2092	ch. 52, § 24	2171	§ 1	2231	R '61,
2038	22-801	2093	R '9,	2172	R '79,	ch. 161, § 11	
2039	22-802		ch. 94, § 7		ch. 131, § 2	2232	R '27,
2040	22-803	2094	R '63,	2173	R '47,	ch. 243, § 12	
2041	22-804	to	ch. 52,		ch. 154, § 16	2233	R '61,
2042	R '27,	2097	§ 24	2173A	54-1711	ch. 161, § 13	
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2043	R '21,		ch. 94, § 7		ch. 131, § 2	ch. 231, § 27	
	ch. 10, § 1	2099,	R '63,	2175	R '25,	2235	R '27,
2044	R '27,	2100	ch. 52, § 24		ch. 39, § 1	ch. 243, § 12	
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2045	§ 1	2102	22-2510		ch. 131, § 2	ch. 231, § 27	
2046	R '67,	2102A*	R '63,	2175(b)	54-1714	2237	R '39,
	ch. 145, § 1	to	ch. 52,		R '79,	ch. 231, § 27	
2047	R '21,	2102C*	§ 24	2176	ch. 131, § 2	2238	R '39,
	ch. 10, § 1	2102D*	R '33,		R '25, ch.	ch. 231, § 27	
2048	R '67,		ch. 172, § 14	2177	39, § 2;	2239	R '39,
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2049	R '21,	2102E*	ch. 52, § 24		131, § 2	2240	54-1227
to	ch. 213,	2102F*		2178	R '79,	2241	54-1228
2050	§ 1	2102G*,	R '33,	to	ch. 131,	2242	54-1229
2051	22-1601	2102H*,	ch. 172, § 14	2180	§ 2	2243	54-1230
2052	22-1602	2103	R '49,	2181	R '67,	2244	54-1231
2053	22-1603		ch. 23, § 17		ch. 363, § 11	2245	54-1232
2054	22-1604	2104	R '27,	2182,	R '79,	2246	54-1233
2055	22-1605		ch. 243, § 12	2183	ch. 131, § 2	2247	54-1234
2056	22-1606	2105	R '49,	2184	R '37,	2248	R '39,
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2058	§ 1	2110	§ 17	2185	R '37,	2261	§ 27
2059	to R '95, ch. 69,	2111	R '29,		ch. 131, § 23	2262	54-101
2062	§ 1		ch. 178, § 2	2186	R '37,	2263	54-102
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2264	54-103	2353	31-1301 R '89,	2418	61-308	2479	61-602
2265	54-104		ch. 19, § 1	2419	61-309	2480	61-603
2266	R '39,	2354	31-1302 R '89,	2420	61-310	2481	61-604
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2267	54-105	2355	R '33,	2422	R '23,	2483	61-606
2268	R '49,		ch. 80, § 1		ch. 68,	2484	61-607
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2276	§ 9		1306 R	2424	61-312	2486	61-609
2277	R '23,	2359	'89, ch. 19,	2425	61-313	2487	61-610
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2278	R '23,	2360	R '29,	2427	61-315	2489	61-612
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2279	R '49,	2367	§ 9	2429	61-317	2491	61-614
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2280	R '29,	2369	61-102	2431	61-319	2493	61-616
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2296	§ 1	2371	61-104	2433	61-321	2495	61-618
2297	44-201 to	2372	61-105	2434	61-322	2496	61-619
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2307	R '82,	2374	61-107	2436	61-324		c. 299, § 1
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2308	44-301 to	2376	61-109	2438	61-326	2499	61-622
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2310	'82, ch. 33,	2378	61-111		Unconst.	2501	61-624
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2311	44-501	2380	61-113	2443	61-401	2503	61-626
2312	44-502	2381	61-114	2444	61-402	2504	R '21,
2313	44-503	2382	61-115	2445	61-403	to	ch. 72,
2314	44-601	2383	61-116	2446	61-404	2506	§ 9
2315	44-602	2384	61-117	2447	R '31,	2507	61-633
2316	44-603	2385	61-118		ch. 14, § 1	2508	61-634
2317	44-604	2386	61-119	2448	61-405	2509	61-635
2318	R '76,	2387	61-120	2449	61-406	2510	61-636
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2319	44-606	2389,	61-122 R '82,	2451	61-502	2512	61-638
2320	44-607	2390	ch. 5, § 1;	2452	61-503	2513	R '77,
2321	44-901		61-123 R '82,	2453	61-504		c. 299, § 1
2322	44-902		ch. 5, § 1	2453A	61-505	2514	61-640
2323	44-1005	2391	61-124		61-506	2515	61-641
2324	44-1101 R '85,	2392	61-125	2454	61-507	2516	61-642
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2325	44-1102 R '85,	2394	61-127	2456	61-509	2518	61-702
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2326	44-1103 R '85,	2396	61-129	2458	61-511	2520	61-704
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2330	R '96, ch. 123,	2399	61-203	2461	61-514	2523	61-707
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2333,	R '71,	2405	61-209	2466	61-519	2529	61-713
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2335	60-101	2407	61-211	2468	61-521	2531	48-101
2336	60-102	2408	61-212	2469	61-522	2532	48-102
2337	R '71,	2409	61-213	2470	61-523	2533	48-103
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2338	60-104	2411	61-301	2472	61-525	2535	48-105
2339	60-105	2412	61-302	2473	61-526	2536	48-106
2340	60-106	2413	61-303	2474	61-527	2537	48-107
2341	R '67,	2414	61-304	2475	61-528	2538	48-108
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2542	48-112	2659	R '76,	2702	R '76,	2736	R '76, c. 95, § 1
2543	48-113	to	c. 95,		c. 95, § 1		
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2546	48-116	2663	S. 36-105(b)	2704	R '69,	2738	R '76, c. 95, § 1
2547	48-117	2664	R '76,		ch. 99, § 4		
2548	R '83, ch. 119, § 2	to	c. 95,	2705	R '69,	2739,	R '45, c. 199, § 18
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2549	R '83, ch. 119, § 2	2668	R '70, c. 21, § 2	2706	R '45,	2741	R '55, ch. 22, § 1
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2550	R '83, ch. 119, § 2	2669	R '76,	2707	R '76,	2742	to R '45, ch. 199, § 18
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2551	28-22-104	2671	§ 1	2708	R '76,	2746,	R '45, ch. 193, § 13
2552	R '79,	2672	R '79, c. 21, § 5		c. 95, § 1	2747	§ 13
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2554	R '83, ch. 119, § 2	2678	§ 1		c. 95, § 1	2750	R '76, c. 95, § 1
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2555	R '69,		ch. 87, § 1		ch. 95, § 1	2751	R '76, c. 95, § 1
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2581	§ 36	2683	R '65,	2715	R '76,	2755	R '76, c. 95, § 1
2582	55-1401		ch. 87, § 5		c. 95, § 1		
2583	55-1402	2684	R '76,	2716	R '76,	2756	R '76, c. 95, § 1
2584	55-1403	to	c. 95,		c. 95, § 1		
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2587	39-1902		ch. 96, § 31	2718	R '76,		
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2592	c. 95, § 1	2694	R '63,		ch. 92, § 4		
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2594	39-2102	2695	R '76,		§ 1		
2595	39-2103		c. 95, § 1	2723	R '76, c. 95, § 1	2763	R '76, c. 95, § 1
2596	35-301	2696	R '70, c. 21, § 10	2724	R '76, c. 95, § 1	2764	R '27, ch. 241, § 2
2597	35-302		§ 10		§ 1		
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2600	35-305	2696D*	§ 1	2726	R '76, c. 95, § 1	2768	
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2603	§ 1	2696G*	§ 5		§ 1	2770	R '76, c. 95, § 1
2604	R '35,	2696H*,	R '55,	2728	R '76, c. 95, § 1		
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2630	§ 90	2696J*	R '53,	2729	R '76, c. 95, § 1		
2631	R '35,		ch. 63, § 5		§ 1	2772	R '76, c. 95, § 1
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2649	§ 90		c. 95, § 1		§ 1	2773	R '76, c. 95, § 1
2650	R '76,	2698	R '76,	2731	R '76, c. 95, § 1		
	c. 95, § 1		c. 95, § 1	2732	R '45, c. 198, § 18	2774	R '76, c. 95, § 1
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2657	§ 1						
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2778	R '76, c. 95, § 1	2812	R '76, c. 95, § 1	2866	58-101	2921	58-321
2779	R '76, c. 95, § 1	2813	R '76, c. 95, § 1	2867	58-102	2922	58-322
2780	R '76, c. 95, § 1	2814	R '76, c. 95, § 1	2868	58-103	2923	58-323
2781	R '76, c. 95, § 1	2815	R '76, c. 95, § 1	2869	58-104	2924	R '23, ch. 87, § 2
2782	R '76, c. 95, § 1	2816	R '76, c. 95, § 1	2870	58-105	2925	58-401
2783	R '76, c. 95, § 1	2817	R '76, c. 95, § 1	2871	58-106	2925A	58-402
2784	R '76, c. 95, § 1	2818	36-2314	2872	58-107	2926	58-403
2785	R '76, c. 95, § 1	2819	R '76, c. 95, § 1	2873	58-108	2927	R '21, ch. 38, § 6
2786	R '76, c. 95, § 1	2820	R '76, c. 95, § 1	2874	R '71, ch. 136, § 51	2928	58-404
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2790	R '76, c. 95, § 1	2824	R '76, c. 95, § 1	2878	58-113 R '92, ch. 241, § 1	2932	58-407
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2792	R '21, c. 112, § 53	2826	R '76, c. 95, § 1	2880	58-115	2934	58-409
2793	R '76, c. 95, § 1	2827	R '76, c. 95, § 1	2881	58-116	2935	58-410
2793A	R '35, ch. 96, § 31	2828	R '76, c. 95, § 1	2882	R '74, ch. 17, § 1	2936	58-411 R '85, ch. 254, § 1
2794	R '76, c. 95, § 1	2829	R '35, c. 96, § 31	2883	58-118	2937	58-412 R '85, ch. 254, § 1
2795	R '76, c. 95, § 1	2830	omitted	2884	58-119	2938	58-413 R '85, ch. 254, § 1
2796	R '76, c. 95, § 1	2831	as falling	2885	58-120	2939	58-414 R '85, ch. 254, § 1
2797	R '76, c. 95, § 1	2832	with the	2886	58-121	2940	**58-414
2797	R '76, c. 95, § 1	2833	Repeal of	2887	58-122	2941	R '25, ch. to ch. 150, § 37
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2798	R '76, c. 95, § 1	2835-2838	Temp.	2889	58-124	2952	58-602
2799	R '76, c. 95, § 1	2839	R '76, c. 95, § 1	2890	58-125 R '92, ch. 241, § 1	2953	58-603
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2801	R '76, c. 95, § 1	2841	R '76, c. 95, § 1	2892	R '80, ch. 111, § 1	2955	R '69, ch. 244, § 1
2802	R '76, c. 95, § 1	2842	R '53, to c. 11, § 1	2893	58-128	2956	42-1701
2803	R '76, c. 95, § 1	2847	§ 1	2894	58-129	2957	42-1702
2804	R '76, c. 95, § 1	2848	R '51, to c. 31, § 1	2895	58-130 R '92, ch. 241, § 1	2958	42-1703
2805	R '76, c. 95, § 1	2853	§ 1	2896	58-201	2959	42-1704
2806	R '76, c. 95, § 1	2854	R '25, to c. 146, § 9	2897	58-202	2960	42-1705
2807	R '76, c. 95, § 1	2859	§ 9	2898	58-203	2961	42-1706
2808	R '76, c. 95, § 1	2860	R '76, c. 95, § 1	2899	58-204	2962	R '69, ch. 244, § 1
2809	R '76, c. 95, § 1	2861	R '76, c. 95, § 1	2900	58-205	2974	R '76, to c. 51, § 1
2810	R '76, c. 95, § 1	2862	R '76, c. 95, § 1	2901	58-206	2975	§ 1
		2863	R '76, c. 95, § 1	2902	58-301	2982	42-1701
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				2908	58-308	2990	R '69, ch. 280, § 12
				2909	58-309	2991	42-1709
				2910	58-310	2992	42-1901
				2911	58-311	2993	42-1902
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3001	42-2006	3064	42-2604	3128	63-220	3185	63-703
3002	42-2007	3065	42-2605	3129	63-301	3186	63-704
3003	42-2008	3066	42-2606	3130	63-302	3187	63-705
3004	42-2009	3067	42-2607	3131	63-303	3188	63-706
3005	42-2010	3068	42-2608	3132	63-304 R '89, ch. 232, § 5	3189	63-707
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3007	42-2012	3070	42-2702	3133	63-305	3191	63-709
3008	42-2013	3071	42-2703	3134	63-306	3192	63-710
3009	42-2014	3072	42-2704	3135	63-307	3193	63-711
3010	42-2015	3073	42-2705	3136	63-308	3194	63-712
3011	42-2016	3074	42-2706	3137	63-309	3195	63-713
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3015	42-2020	3086	67-4201	3141	63-313	3198	63-716
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3017	42-2022		ch. 188, § 1	3143	R '65, ch. 312, § 32	3200	63-718
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3020	42-2027	3090	67-4202			3203	63-803
3021	42-2028	3091	67-4203	3145	63-317 R '82, ch. 123, § 4	3204	63-804
3022	42-2029	3092	67-4204			3205	63-805
3023	42-2030	3093	67-4205	3146	63-318	3206	R '73, c. 12, § 3
3024	42-2031	3094	R '23, ch. 208, § 1	3147	63-319		
3025	42-2032			3148	63-320	3207	63-807
3026	42-2033	3095	67-4206	3149	63-321	3208	63-808
3027	42-2034	3096	63-101	3150	63-322	3209	63-809
3028	42-2035	3097	63-102	3151	63-323	3210	63-810
3029	42-2036	3097A	63-103	3152	R '69, ch. 453, § 19	3211	63-901
3030	42-2037	3098	63-104			3212	63-902
3031	42-2038	3099	63-105	3153	63-402	3213	63-903
3032	R '74, ch. 164, § 10	3099A	63-106	3153A	R '29, ch. 263, § 22	3214	R '63, ch. 290, § 29
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3033	42-2040	3101	63-108	3154	63-403	3215	R '65, ch. 144, § 2
3034	42-2101	3102	63-109	3155	63-404		
3035	42-2102	3103	63-110	3156	63-405	3216	63-906
3036	42-2103	3104	R '69, ch. 315, § 2	3157	R '65, ch. 312, § 32	3217	63-911
3037	42-2104			3158	63-407	3218	63-912
3038	42-2105	3105	R '75, ch. 157, § 1	3159	63-408	3219	63-913
3039	R '25, ch. 107, § 1	3106	63-113	3160	63-409	3220	63-914
		3107	63-114	3161	63-410	3221	R '27, ch. 232, § 12
3040	42-2201	3108	63-115	3162	63-411	3222	63-915
3041	42-2202	3109	62-201	3163	63-412	3223	R '69, ch. 455, § 83
3042	42-2203			3164	63-413		
3043	42-2204	3110	R '65, ch. 312, § 9	3165	63-414	3224	63-918
3044	42-2205			3166	R '45, ch. 69, § 15	3225	63-919
3045	42-2206	3111	R '75, ch. 216, § 1			3226	63-920
3046	42-2207	3112	63-204	3167	63-601	3227	63-1001
3047	42-2208	3113	63-205	3168	63-602	3228	63-1002
3048	42-2209	3114	63-206	3169	63-603	3229	63-1003
3049	42-2210	3115	63-207	3170	63-604	3230	63-1004
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3052	42-2501	3117	63-209	3173	63-608	3233	63-1101
3053	42-2502	3118	63-210	3174		3234	63-1102
3054	42-2503	3119	63-211	3175,	R '65,	3235	63-1103
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3057	42-2506	3121	63-213	3178	63-612	3237	63-1105 R '89, ch. 100, § 4
3058	42-2507	3122	63-214	3179	63-613	3238	63-1106 R '89, ch. 100, § 4
3059	42-2508	3123	63-215	3180	63-614		
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3241	63-1109	3284C	63-1303	3360	63-2801	3435	31-820
3242	63-1110 R '89, ch. 100, § 4	3284D	63-1304	3361	63-2802	3436	31-821
3243	63-1111 R '89, ch. 100, § 4	3284E	63-1305	3362	63-2803	3437	31-822
3244	63-1112 R '89, ch. 100, § 4	3284F	63-1306	3363	63-2804	3438	31-823
		3284G	63-1307	3364	63-2805	3439	31-824
3245	63-1113	3284H	63-1308	3365	63-2806	3440	31-825
3246	63-1114	3284I	63-1309	3366	63-2807	3441	31-826
3247	63-1115 R '89, ch. 100, § 4	3284J	63-1310	3367	63-2808	3442	31-827 R '89, ch. 73, § 16
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3248	63-1116	3296	§ 1	3369	63-2810	3444	31-837 R '89, ch. 73, § 20
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3250	63-1118		to ch. 455,	3371	R '29, to ch. 243,	3445	31-838 R '89, ch. 73, § 20
3251	63-1120	3303	§ 83	3395	§ 28	3446	31-839
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3261	63-1137	3315	63-2003	3408	31-707	3461	ch. 73, § 23
3262	63-1138	3316	63-2004	3409	31-708	3462	31-855
3263	63-1139	3317	63-2005	3410	31-709	3463	31-1001
3264	63-1201	3318	63-2006	3411	31-710	3464	31-1002
3265	63-1202	3319	63-2007	3412	31-711	3465	31-1003
3266	63-1203	3320	63-2008	3413	31-712	3466	31-1004
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3269	63-1210	3326	63-2104			to	31-1105 R
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3271	63-1212	3328	63-2106	3423	31-808	3475	R '51,
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3274	63-1214	3333	63-2204	3423D	31-834	3502	31-1501
3275	63-1215	3334	63-2205	3423E	31-835	3503	31-1502
3276	63-1216	3335	63-2206	3423a	31-836	3504	31-1503
3277	63-1217	3336	63-2207	3424	31-809	3505	R '95, ch. 61, § 5
3278	63-1218	3337	63-2208	3425	31-810	3506	31-1506
3279	63-1219	3338	63-2209	3426	31-811	3507	R '95, ch. 61, § 5
3280	63-1220	3339	63-2210	3427	31-812		
3281	63-1221	3340	R '49, ch. 118, § 2	3428	31-813	3508	31-1508
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3283	63-1223	3341 to		3430	31-815	to	31-1511 R
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3513	31-1513		R '94, ch. 35, § 1	3632	31-2309	3698	R '74, ch. 54, § 1
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3514	31-1514		R '94, ch. 35, § 1	3634	31-2402	3700	31-3107
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3515 to			31-2111		R '96, ch. 29, § 1	3702	31-3201
3518	R '95, ch. 61, § 5	3572	31-2111	3636	31-2404	3703	31-3202
3519	31-1901		R '94, ch. 35, § 1	3637	31-2405	3704	31-3203
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3521	31-1903	3574	31-2113	3639	31-2407	3706	31-3205
3522	R '27, ch. 262, § 12	3575	31-2114	3640	31-2408	3707	31-3206
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3527	31-1906 R '88, ch. 278, § 1	3579	31-2118	3644	31-2412	3711	31-3210 R '89, ch. 72, § 2
3528	31-1907 R '88, ch. 278, § 1	3580	31-2119	3645	31-2413	3712	31-3211
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3544	31-2004	3587	31-2202	3652	31-2501	3719	31-3218
3545	31-2005	3588	31-2203	3653	31-2601	3720	31-3301
3546	31-2006	3589	31-2204	3654	31-2602	3721	31-3302
3547	31-2007	3590	31-2205	3655	31-2603	3722	31-3401 to 31-3411 R
3548	31-2008	3591	31-2206	3656	31-2604	3723	'92, ch. 83, § 2
3549	31-2009	3592	31-2207	3657	31-2605	3733	R '37, to ch. 216, § 42
3550	31-2010	3593	31-2208 to 31-2210 R	3658	31-2606	3747	R '29, to ch. 6, § 1
3551	31-2011	3594	'89, ch. 14, § 2	3659	31-2607	3748	R '29, to ch. 6, § 1
3552	R '61, ch. 261, § 1	3595	31-2211	3660	31-2608	3755	31-301
3553	31-2013	3596	31-2212	3661	31-2609	3756	31-302
3554	31-2014	3597	31-2213	3662	31-2610	3757	31-303
3555	31-2015	3598	31-2214	3663	31-2611	3758	31-501
3556	31-2016	3599	31-2215	3664	31-2612	3759	31-502
3557	31-2017	3600	31-2216	3665	31-2613	3760	31-503
3558	R '69, ch. 111, § 10	3601	31-2217	3666	31-2614	3761	31-504
3559	31-2101	3602	31-2218	3667	R '63, to ch. 90, § 1	3762	31-505
3560	31-2102	3603	31-2219	3668	31-2705	3763	58-801
3561	31-2103	3604	31-2220	3669	R '63, ch. 90, § 1	3764	58-802
3562	31-2104	3605	31-2221	3670	31-2707	3765	58-803
3563	31-2105	3606	31-2222	3671	R '63, ch. 90, § 1	3766	58-804
3564	R '94, ch. 35, § 1	3607	31-2223	3672	31-2801	3767	58-805
3565	31-2106	3608	31-2224	3673	31-2802	3768	58-806
3566	R '94, ch. 35, § 1	3609	31-2225	3674	31-2803	3769	58-807
3567	31-2107	3610	31-2226	3675	31-2804	3770	58-808
	R '94, ch. 35, § 1	3611	1-1001	3676	31-2805	3771	58-809
3568	31-2107	3612	1-1002	3677	31-2806 R '92, ch. 95, § 1	3772	58-810
		3613	1-1003	3678	31-2901	3773	58-811
		3614	31-2301	3679	R '69, ch. 111, § 1	3774	58-812
		3615	31-2302	3680	31-3002 to 31-3011 R	3775	58-813
		3616	31-2303	3681	'89, ch. 43, § 1	3776	58-814
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3779	58-816	4329	43-117	4389A	43-708	4435D	43-1312
3780	58-817	4330	43-201	4389B	43-709	4435E	43-1313
3781	58-818	4331	43-202	4389C	43-710	4436	43-1401
3782	58-819	4332	43-203	4389D	43-711	4437	43-1402
3783	58-820	4333	43-204	4389E	43-712	4438	43-1403
3784	58-821	4334	43-205	4389F	43-715	4439	43-1404
3785	58-822	4335	43-206	4389G	43-716	4440	43-1405
3786	58-823	4336	43-207	4389H	43-717	4441	43-1406
3787	R '67,	4337	43-208		R '94, ch. 144,	4442	43-1407
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3816	§ 472	4339	43-210	4389I	43-718	4444	43-1502
3816A*	R '67, ch. 429,	4340	43-211		R '94, ch. 144,	4445	43-1503
	§ 472	4341	43-212		§ 4	4446	43-1504
3817	R '67,	4342	43-213	4389J	43-719	4446A	43-1505
to	ch. 429,	4343	43-301		R '94, ch. 144,	4447	43-1601
3936	§ 472	4344	43-302		§ 4	4448	43-1602
3937	R '47, ch. 204,	4345	43-303	4389K	43-720	4449	43-1603
	§ 1	4346	43-304	4390	43-723, n.	4450	43-1604
3938	R '67,	4347	43-305	to		4451	43-1605
to	ch. 429,	4348	43-313	4398		4452	43-1606
3970	§ 472	4349	43-314	4399	43-721	4453	43-1607
3971	R '51, ch. 47,	4350	43-316	4400	43-723, n.	4454	43-1701
	§ 17	4351	43-317	to		4455	43-1702
3972	R '67,	4352	43-319	4401		4456	43-1703
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3984	§ 472	4354	43-321	4402	43-725	4458	43-1705
3984A*	R '67, ch. 429,	4355	43-322	4402A	43-726	4459	43-1706
	§ 472	4356	43-323	4403	R '75, ch. 49,	4460	43-1707
3985	R '67,	4357	43-324		§ 1	4461	43-1708
to	ch. 429,	4358	43-325	4404	43-902	4462	43-1709
4092	§ 472	4358A	R '37, ch. 39,	4405	43-903	4463	43-1710
4093	R '61,		§ 3	4406	43-904	4464	43-1711
to	ch. 252,	4359	43-401	4407	43-905	4465	43-1712
4097	§ 1	4360	43-402	4408	43-906	4466	43-1801
4098	R '67,	4361	43-403	4409	43-907	4467	43-1802
to	ch. 429,	4362	43-404	4410	43-908	4468	43-1803
4109	§ 472	4363	43-405	4411	43-1001	4469	43-1804
4109A	R '67,	4364	43-406	4412	43-1002	4470	43-1805
to	ch. 429,	4365	43-407	4413	43-1003	4471	43-1806
4109E	§ 472	4366	43-408	4414	43-1004	4472	43-1807
4110	R '67,	4367	43-409	4415	43-1005	4473	43-1808
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4114	§ 472	4369	43-411	4417	43-1007 R '90,	4475	43-1810
4115	R '27,	4370	43-412		ch. 340, § 5	4476	43-1811
to	ch. 262,	4371	43-501	4418	43-1008	4477	43-1812
4120	§ 15	4372	43-502	4419	43-1009	4478	43-1813
4121	R '67,	4373	43-503	4420	43-1010	4479	43-1814
to	ch. 429,	4374	43-504	4421	43-1011	4480	43-1815
4312	§ 472	4375	43-601	4422	43-1101	4481	43-1816
4313	43-101	4376	43-602	4423	**43-1105	4482	43-1817
4314	43-102	4377	43-603	4424	**43-1104	4483	43-1818
4315	43-103	4378	43-604	4425	**43-1106	4484	43-1819
4316	43-104	4379	43-605	4426	**43-1107	4485	43-1820
4317	43-105	4380	43-606	4427	**43-1108	4486	43-1821
4318	43-106	4381	43-607	4428	43-1301	4487	43-1822
4319	43-107	4382	43-608	4429	43-1302	4488	43-1823
4320	43-108	4383	43-609	4430	43-1303	4489	43-1824
4321	43-109	4383A	43-610	4431	43-1304	4490	43-1825
4322	43-110	4384	43-701	4432	43-1305	4491	43-1826
4323	43-111	4385	43-702	4433	43-1306	4491A	43-1827
4324	43-112	4386	43-703	4434	43-1307	4492	43-1828
4325	43-113	4387	43-704	4435	43-1308	4493	42-2901
4326	43-114	4387A	43-705	4435A	43-1309	4494	42-2904
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4496	42-2906	4560	38-1005	4625	32-601	4685	32-1504
4497	42-2907	4561	38-1006	4626	32-602	4686	32-1505
4498	42-2908	4562	38-1007	4627	32-603	4687	32-1506
4499	42-2909	4563	38-1008	4628	32-604	4688	32-1507
4500	42-2910	4564	38-1009	4629	32-605	4689	32-1508
4501	42-2911	4565	38-1010	4630	32-606	4690	32-1509
4502	42-2912	4566	38-1011	4631	32-607	4691	32-1510
4503	42-2913	4567	38-1012	4632	32-608	4692	R '29,
4504	42-2914	4568	38-1013	4633	32-609	to	ch. 262,
4505	Unconst.	4569	38-1014	4634	32-611	4696	§ 51
4506	42-2915	4570	38-1015	4635	32-612	4697	R '77, ch. 252,
4507	42-2916	4571	38-1016	4636	32-613	§ 2	
4508	42-2917	4572	38-1017	4637	32-614	4698	R '29, ch. 262,
4509	42-2918	4573	38-1018	4638	32-615	§ 51	
4510	42-2919	4574	38-1019	4639	32-701	4699,	R '77, ch. 252,
4511	42-2920	4575	38-1020	4640	32-702	4700	§2
4512	42-2921	4576	38-1021	4641	32-703	4701	R '29,
4513	42-2922	4577	38-1022	4642	32-704	to	ch. 262,
4514	42-2923	4578	38-1023	4643	**32-717	4702	§ 51
4515	42-2924	4579	38-1024	4644	R '80, ch. 378,	4703	R '79, c. 105,
4516	42-2925	4580	38-1025	§ 1		§ 1	
4517	42-2926	4581	38-1026	4645	32-707	4704	R '29,
4518	42-2927	4582	38-1027	4646	32-708	to	ch. 262,
4519	42-2928	4583	32-101	4647	R '80,	4712	§ 51
4520	42-2929	4584	32-102	to	ch. 378,	4713	R '79, c. 105,
4521	42-2930	4585	32-103	4649	§ 1	§ 1	
4522	42-2931	4586	32-104	4650	32-712	4714	R '29,
4523	42-2932	4587	32-105	4651	32-713	to	ch. 262,
4524	42-2933	4588	32-106	4652	32-714	4720	§ 51
4525	42-2934	4589	32-107	4653	32-715	4721,	R '79, c. 105,
4526	42-2935	4590	32-108	4654	32-901	4722	§ 1
4527	42-2936	4591	32-201	4655	R '74, ch. 194,	4723	R '29,
4528	42-2937	4592	32-202	§ 1		to	ch. 262,
4529	42-2938	4593,	R '95, ch. 104,	4656	32-903	4729	§ 51
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4532	42-2941	4596	32-206	4659	R '41, ch. 62,	4732	R '27, ch. 88,
4533	42-2942	4597	32-207	§ 2		§ 25	
4534	42-2943	4598	32-208	4660	R '80, ch. 300,	4753,	R '79, c. 105,
4535	42-2944	4599	32-209	§ 1		4754	§ 1
4536	42-2945	4600	32-301	4661	32-907	4755	R '29,
4537	42-2946	4601	32-302	4662	32-908	to	ch. 262,
4538	42-2947	4602	32-303	4663	32-909	4760	§ 51
4539	42-2948	4603	32-304	4664	32-910	4761	30-201
4540	42-2949	4604	32-305	4665	32-911	4762	30-202
4541	42-2950	4605	32-306	4666	32-912	4763	30-203
4542	42-2951	4606	32-307	4667	R '74, ch. 194,	4764	30-204
4543	42-2952	4607	32-308	§ 4		4765	30-205
4544	42-2953	4608	32-309	4668	32-914	4766	30-206
4545	42-2954	4609	32-401	4669	32-915 R '88,	4767,	R '79, ch. 105,
4546	42-2955	4610	32-402	ch. 50, § 2		4768	§ 1
4547	42-2956	4611	32-403	4670	32-916	4769	R '29,
4548	42-2957	4612	32-404	4671	32-917	to	ch. 262,
4549	42-2958	4613	32-405	4672	32-918	4771	§ 51
4550	42-2959	4614	32-406	4673	32-919	4772	R '79,
4551	42-2960	4615	32-407	4674	32-920	to	c. 105,
4552	42-2961	4616	32-408	4675	32-1001	4779	§ 1
4553	42-2962	4617	32-409	4676	32-1002	4780	R '79,
4554	42-2963	4618	32-410	4677	32-1003	to	c. 105,
4555	42-2964	4619	32-411	4678	32-1004	4783	§ 7
4556	38-1001	4620	32-501	4679	32-1005	4784	30-605
4557	38-1002	4621	32-502	4680	32-1006	4785	30-606
4558	38-1003	4622	32-503	4681	32-1007	4786	R '79,
		4623	32-504	4682	32-1501	to	c. 105,
				4683	32-1502	4792	§ 7

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4794	62-102	4864	30-908	5014	R '47, ch. 114,	to	ch. 330,
4795	62-103	4865	R '78, c. 308,		§ 17	5139	§ 809
4796	62-104		§ 14	5014A	R '47, ch. 114,	5140	R '59, ch. 301,
4797	62-105	4866,	R '79, c. 159,		§ 17		§ 2
4798	62-106	4867	§ 1	5015	R '47, ch. 114,	5141	41-3006
4799	62-107	4868	R '77, c. 252,		§ 17	5142	R '61,
4800	62-108		§ 14	5016	R '47, ch. 114,	to	ch. 330,
4801	62-109	4869	R '79, c. 159,		§ 17	5185	§ 809
4802	62-110		§ 1	5017	R '47, ch. 114,	5186	R '51, ch. 67,
4803	62-201	4870	R '79,		§ 17		§ 11
4804	62-202	to	c. 159,	5018	R '47, ch. 117,	5187	R '61,
4805	62-203	4878	§ 1		§ 17	to	ch. 330,
4806	62-204	4879	R '79,	5019	R '47,	5198	§ 809
4807	62-205	to	c. 159,		ch. 117, § 17	5199	R '41, ch. 130,
4808	62-206	4887	§ 1	5020	R '61,		§ 1
4809	62-401	4888	R '79,	to	ch. 330,	5200	R '41, ch. 130,
4810	62-402	to	ch. 159,	5033	§ 809		§ 1
4811	62-403	4897	§ 2	5034	41-1303	5201	R '41, ch. 130,
4812	62-404	4898	R '74,	5035	R '61,		§ 1
4813	62-405	to	ch. 18,	to	ch. 330,	5202	R '41, ch. 130,
4814	62-406	4900	§ 1	5041	§ 809		§ 1
4815	62-407	4901	62-901	5042	R '53,	5203	R '41, ch. 130,
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4817	62-409	4903	62-903	5044	§ 44	5204	R '41, ch. 130,
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4819	62-411	4905	62-905	5046,	R '53, ch. 131,	5205	R '25,
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4822	62-414	4908	30-1304		§ 809	5210	R '21, ch. 42,
4823	62-415	4909	30-1305	5049	R '27, ch. 17,		§ 23
4824	62-416	4910	30-1306		§ 1	5211	(none)
4825	62-417	4911	30-1307	5050	R '61,	5212	R '25,
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4829	30-701	4915	30-1311		§ 6	to	ch. 133,
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4831	30-703	to	ch. 330,	5057	41-2202	5235	R '25,
4832	62-701	4947	§ 809	5058	41-2203	to	ch. 133,
4833	62-702	4948,	R '47, ch. 64,	5059	41-2204	5284	§ 113
4834	62-703	4949	§ 3	5060	41-2205	5285	R '21, ch. 42,
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4839	62-803		§ 3	5065	41-2210	5290	R '21, ch. 42,
4840	62-804	4957	R '61,	5066	41-2211		§ 28
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4844	30-803		§ 27	5070	41-2215	to	ch. 133,
4845	30-804	4965	R '61,	5071	41-2216	5293	§ 113
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4858	30-901	to	R '61,	5078	41-2223	5305	R '67,
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4861	30-904	5003	§ 3	5126	§ 809	5326	55-102
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5331	55-107	5395	55-710	5450	55-1106	5530	47-611
5332	55-108	5396	55-711	5451	55-1107	5531	47-612
5333	55-109	5397	55-712	5452	55-1108	5532	R '70, c. 92, § 13
5334	55-110	5397A	55-713	5453	55-1109	5533	R '70, c. 92, § 14
5335	55-111	5397B	55-714	5454	55-1110	5534	R '70, c. 92, § 15
5336	55-112	5397C	55-715	5455	55-1111	5535	R '70, c. 92, § 16
5337	55-113	5398	55-716	5456	55-1112	5536	R '70, c. 92, § 17
5338	55-114	5399	55-717	5457	55-1113	5536A	47-618
5339	55-201	5400	55-718	5458	55-1114	5536B	47-619
5340	55-202	5401	55-719	5459	55-1115	5537	47-901
5341	55-203	5402	55-720	5460	55-1201 R '89, ch. 371, § 1	5538	47-902
5342	55-204	5403	55-721	5461	55-1202 R '89, ch. 371, § 1	5539	47-903
5343	55-205	5404	55-722	5462	55-1203 R '89, ch. 371, § 1	5540	47-904
5344	55-206	5405	55-723	5463	55-1204 R '89, ch. 371, § 1	5541	47-905
5345	55-207	5406	55-724	5464	55-1205 R '89, ch. 371, § 1	5542	47-906
5346	55-208	5407	55-725	5465	55-1206 R '89, ch. 371, § 1	5543	47-907
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5365	55-501	5426	55-814	5484	47-204	5562	42-107
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5586	42-303	5638	42-914	5826	53-314	6187	69-210
5587	42-304	5639	42-915	5827	53-315	6188	69-211
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7368	45-413	7420	7-717		§ 20	7950	9-313
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8248	R '71,	8380	§ 5	8618	19-103	8680	19-4111
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8713	19-508	8776	19-1006	8838	19-1423	8902	19-1815
8714	19-509	8777	19-1007	8839	19-1424	8903	19-1901
8715	19-510	8778	19-1008	8840	19-1425	8904	19-1902
8716	19-511	8779	19-1009	8841	19-1426	8905	19-1903
8717	19-512	8780	19-1010	8842	19-1427	8905A	19-1904
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8719	19-514	8782	19-1012	8844	19-1429	8907	19-1906
8720	19-515	8783	19-1013	8845	19-1430	8908	19-1907
8721	19-516	8784	19-1014	8846	19-1431	8909	19-1908
8722	19-517	8785	19-1015	8847	19-1501	8910	19-1909
8723	19-518	8786	19-1016	8848	19-1502	8911	19-2001
8724	19-601	8787	19-1017	8849	19-1503	8912	19-2002
8725	19-602	8788	19-1018	8850	19-1504	8913	19-2003
8726	19-603	8789	19-1101	8851	19-1505	8914	19-2004
8727	19-604	8790	19-1102	8852	19-1506	8915	19-2005
8728	19-605	8791	19-1103	8853	19-1507	8916	19-2006
8729	19-606	8792	19-1104	8854	19-1508	8917	19-2007
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8731	19-608	8794	19-1106	8856	19-1510	8919	19-2009
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8733	19-610	8796	19-1108	8858	19-1512	8921	19-2011
8734	19-611	8797	R '81, ch. 124, § 1	8859	R '67, ch. 181, § 21	8922	19-2012
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8736	19-613	8799	19-1111	8861	19-1515	8924	19-2014
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8739	19-616	8802	19-1201	8864	19-1602	8927	19-2017
8740	19-617	8803	19-1202	8865	19-1603	8928	19-2018
8741	19-618	8804	19-1203	8866	19-1604	8929	19-2019
8742	19-619	8805	19-1204	8867	19-1605	8930	19-2020
8743	19-801	8806	19-1205	8868	19-1701	8931	19-2021
8744	19-802	8807	19-1206	8869	19-1702	8932	19-2022
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8746	19-804	8809	19-1301	8871	19-1704	8934	19-2024
8747	19-805	8810	19-1302	8872	19-1705	8935	19-2025
8748	19-806	8811	19-1303	8873	19-1706	8936	19-2026
8749	19-807	8812	19-1304	8874	19-1707	8937	19-2027
8750	19-808	8813	19-1305	8875	19-1708	8938	19-2028
8751	19-809	8814	19-1306	8876	19-1709	8939	19-2029
8752	19-810	8815	19-1307	8877	19-1710	8940	19-2030
8753	19-811	8816	19-1308	8878	19-1711	8941	19-2101
8754	19-812	8817	19-1401	8879	19-1712	8942	19-2102
8755	19-813	8818	19-1402	8880	19-1713	8943	19-2103
8756	19-814	8819	19-1403	8881	19-1714	8944	R '71, to
8757	19-815	8820	19-1404	8882	19-1715	8948	c. 143, § 5
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8767	19-825	8830	19-1414	8892	19-1806	8960	19-2120
8768	19-901	8831	19-1415	8893	19-1807	8961	19-2121
8769	19-902	8832	19-1416	8894	19-1808	8962	19-2122
8770	19-903	8833	19-1417	8895	19-1809	8963	19-2123
8771	19-1001	8834	19-1418	8896	19-1810	8964	19-2124
8772	19-1002	8835	19-1419	8897	19-1811	8965	19-2125
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8968	19-2128	9035	19-2513	9113	19-2922	9181	19-3506
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247	1	R '47,		4	57-104	257	1	R '79,
		c. 53, § 46		5	57-106			c. 159, § 1
248	1	R '27, c. 244		6	57-107		1	25-2116
249	1, subd.	R '27, c.		7	57-108	258		
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250	1	Rplg.		11—23	R '69,	261	1—3	Spec.
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251	1	R '27, c. 244		24	57-127		2	Rplg.
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3	1	Rplg.	16	1, 2	R '55,			§ 1; 45-304 R '89,
4	1, 2	Appn.			ch. 259, § 42			ch. 359, § 1; 45-
5	1	Rplg.	17	1, 2	Obsolete			305 R '89, ch.
	2	Emer.	18	1	Rplg.			359, § 1; 45-306
6	1, 2	Appn.		2	Rplg.			R '89, ch. 359,
7	1	58-305	19	1	31-2225			§ 1; 45-307 R '89,
	2	Rplg.	20	1	55-1005 R '89, ch.			ch. 359, § 1; 45-
	3	Emer.			371, § 1			308 R '89, ch.
8	1	47-1101	21	1—3	R '63,	34	1	359, § 1
	2	Emer.			ch. 13, § 236			Rplg.
9	1—4	Temp.	22	1—5	Spec.		2—8	Temp.
10	1—4	R '35, ch. 103,	23	1, 2	R '63,	35	1—3	R '47, ch. 53,
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11	1	1-301	24	1	45-310 R '89, ch.		4	Appn.
	2	1-302			359, § 1		5	Emer.
	3	1-303	25	1, 2	Appn.	36	1	R '31,
	4	Rplg.	26	1, 2	R '63,			ch. 219, § 3
	5	Emer.			ch. 13, § 236	37	1-4	37-1101 to 37-
12	1	Rplg.	27	1	43-313			1104
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13	1	Rplg.			ch. 429, § 472	38	1	R '45, ch. 198,
14	1	63-1125 R '88, ch.	29	1	37-206			§ 18
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44	1, 2	R '79,		3	33-3703		10	47-708
		ch. 105, § 1		4	Emer.		11	47-709
45	1	63-1102 R '70, ch.	73	1	43-319		12	47-710
		221, § 1		2	Emer.		13	47-711
	2	63-1117	74	1	R '61,		14	47-712
	3	63-1121			ch. 330, § 809		15	58-304
	4	R '80, ch. 71, § 6	75	1—3	R '27, ch. 244		16	47-713
	5	Rplg.	76	1—7	R '53,		17	Rplg.
46	1, 2	Appn.			ch. 32, § 1	97	1	19-4115
47	1	40-2213 R '85, ch.	77	1	40-1612 R '85, ch.	98	1	R '67,
		253, § 1			253, § 1			ch. 429, § 472
48	1—14	R '47, ch. 246,		2	Emer.		2	7-701
		§ 19	78	1	67-904	99	1	61-212
49	1	5-238		2	Emer.		2	Emer.
	2	Rplg.	79	1	5-404	100	1	Spec.
50	1	22-701	80	1	R '33, ch. 131,	101	1—3	R '67,
51	1—3	Appn.			§ 1			ch. 394, § 59
52	1	R '31, ch. 87		2	40-1602 R '85, ch.	102	1—4	R '29, ch. 156
53	1	42-221			253, § 1	103	1, 2	R '51,
54	1	R '71,	81	1, 2	R '76,			ch. 290, § 40
		ch. 111, § 5			ch. 95, § 1	104	1	R '61,
55	1	66-901	82	1, 2	R '63,			ch. 207, § 1
	2	Emer.			ch. 13, § 236	105	1	R '72,
56	1	R '61,	83	1, 2	Appn.			ch. 91, § 1
		ch. 330, § 809	84	1	43-413	106	1—8	Appn.
57	1	R '70,		2	Emer.	107	1—5	R '70,
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58	1	R '61,	86	1	67-3801	108	1—9	Appn.
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59	1—3	R '27, ch. 110		3	67-3803		2	Rplg.
60	1	R '83, ch. 33, § 1		4	67-3804	110	1	67-1401
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62	1	Rplg.		2	Emer.	114	1	49-127 R '84, ch.
63	1	49-347 R '87,	89	1	39-269			195, § 1
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	3	Emer.	91	1—4	63-3201—63-3204		2	Rplg.
64	1	9-302			R '83, ch. 102, § 1		3	Emer.
65	1	R '63,		5, 6	63-3205, 63-3206	116	1	1-1102
		ch. 13, § 236			R '83, ch. 102, § 1		2	Emer.
66	1	Rplg.		7	Rplg.	117	1	58-310
67	1	R '61,		8	Emer.		2	Rplg.
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68	1	61-311	93	1	44-1101 R '85, ch.	118	1	R '71,
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69	1	Rplg.			253, § 1			ch. 51, § 1
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70	1	22-1902 R '88,			253, § 1	121	1	37-1001
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	11	Rplg.		1	42-2401			§ 6
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122	1—12	R '55,		3	42-2403		4	25-403
		ch. 96, § 1		4	Emer.		5	Rplg.
123	1	R '51,	134	1	42-2902	159	1, 2	Appn.
		ch. 76, § 16		2	42-2903	160	1, 2	Appn.
124	1—9	Appn.	135	1	42-204	161	1—3	R '29, ch. 140
125	1	67-1301		2	Emer.	162	1—3	R '63,
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	3	67-1303		2	31-103	163	1—4	R '29, ch. 206,
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126	1	R '47, ch. 221,	137	1—3	Appn.	164	1—4	R '74,
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127	1—9	Appn.			ch. 429, § 472		11	67-1032
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129	1—3	R '76,			ch. 466, § 15			R '94, ch. 181, § 6
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		ch. 87, § 4		3	55-805	165	1, 2	Temp.
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	10	R '69,		4	25-304		4, 5	Rplg.
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	11	R '31, ch. 211		6	25-306	169	1, 2	R '31, ch. 87
	12	R '76,		7	Emer.	170	1	R '76,
		ch. 95, § 1	147	1	Appn.			ch. 95, § 1
	13	R '27, ch. 258		2	Emer.		2	R '27, ch. 241
	14	R '76,	148	1	Appn.		3	R '45, ch. 199,
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	15	R '45, ch. 199,			§ 16		4	R '45, ch. 199,
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	2	39-1102		2	R '33, ch. 14,			ch. 330, § 809
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	5	R '51,	156	1	§ 1	178	1	43-727—43-729
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183	1	R '49,	198	1-4	R '25, ch. 133		5	3-405, n.
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191	1-9	Appn.			§ 13		17	3-420
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8	1	31-1908 R '88, ch. 278, § 1		2	42-3002	31	1	R '76,
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9	11	R '75,		4	42-3004	32	1	R '51,
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10	1	R '75,		6	42-3006			R '63,
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11	1, 2	R '71,		8	42-3008			'70, ch. 70, 29;
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18	1	R '47, ch. 260,		3	39-1817	37	1	R '79,
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	5	Rplg.	69	1—13	39-1601—39-1613		4	Emer.
40	1—4	Appn.			R '91, ch. 142, § 1	91	1—3	39-1701—39-1703
41	1—5	Appn.	70	1—3	R '61,			R '91, ch. 142, § 1
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	2	Emer.	71	1	R '47,			ch. 175, § 1
43	1	5-508			ch. 114, § 17		5	39-1706 R '91, ch.
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44	1	42-219		2	43-1830		6*	R '61,
45	1	57-104		3	Rplg.			ch. 149, § 2
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	11	57-131	76	1, 2	R '67,			ch. 95, § 1
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		ch. 142, § 12		2	Emer.	98	1	40-1618 R '85, ch.
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51	1, 2	R '71,		3	67-4303	107	1	Rplg.
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52	1	22-801	84	1	58-414 R '85, ch.		3	Emer.
53	1, 2	R '76,			254, § 1	108	1, 2	R '51,
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54	1	Temp.		2	Emer.	109	1	43-2007
55	2	66-901	86	1	4-101	110	1	Rplg.
56	1	63-1122		2	4-102	111	1	1-1105
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58	1—6	Spec.			ch. 283, § 1			ch. 170, § 3
59	1	R '55,		5	4-105		4	Rplg.
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124	1	9-302			ch. 41, § 1			ch. 394, § 59
125	1	5-408		98	R '67,	152	1, 2	Appn.
126	1	R '29, ch. 181			ch. 161,	153	1, 2	Appn.
127	1, 2	R '67,			§ 10-102		3	57-903, n.
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		R '94, ch. 144, § 4		105	26-1108	158	1—4	Appn.
	2	43-722		106	26-1201	159	1, 2	Appn.
	3	43-723, n.		107	26-1109	160	1—4	Appn.
	4	43-723, n.		108	26-1110	161	1—3	Temp.
	5	43-723, n.		109	R '45,	162	1—3	R '27, ch. 109
	6	43-723, n.			ch. 66, § 2	163	1, 2	Appn.
	7	43-723		110—	R '79,	164	1, 2	Temp.
	8	43-726		113	ch. 41, § 1	165	1	30-702
	9	43-905	134	1	43-322	166	1	R '67,
129	1	72-912, n.		2	Emer.			ch. 429, § 472
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130	1	R '57,	136	1	R '63,	168	1—3	58-326—58-328 R
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131	1	22-301	137	1, 2	R '31, ch. 98	169	1	63-2104
	2	22-302	138	1—7	R '27, ch. 236	170	1—3	Appn.
	3	22-303	139	1	43-305	171	1	R '35,
	4	22-304	140	1	57-602			ch. 103, § 90
	5	22-305		2	Emer.	172	1	R '47,
	6	22-306	141	1—4	Appn.			ch. 53, § 46
	7	22-307	142	1—6	Obsolete	173	1, 2	Appn.
	8	22-308	143	1	63-915	174	1—9	R '67,
132	1	57-301		2	R '69,			ch. 429, § 472
	2	57-302			ch. 455, § 83	175	1, 2	R '27, ch. 199
	2A	57-303		3	63-917	176	1	R '49,
	3	57-304	144	1—4	Appn.			ch. 205, § 4
	4	57-305	145	1—3	R '37,	177	1,	49-201, R '88, ch.
	5	57-306			ch. 43, § 6			265,
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	25	R '35,	146	1—5	R '35, ch. 188		or	
		ch. 20, § 1		6	R '29, ch. 230		1(1—7)	
	26—30	R '79,		7—10	R '35, ch. 188		1(8)	R '87, ch. 279, § 2
		ch. 41, § 1	147	1	43-1831		2	49-127 R '84, ch.
	31	R '70,		2	43-1832			195, § 1
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		ch. 41, § 1	148	1—13	R '57,		7	Temp.
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	11	R '76,			ch. 159, § 1	223	1	R '65,
		ch. 95, § 1	197	1—8	R '29, ch. 267			ch. 87, § 3
180	1	31-808	198	1—8	Unconst.		2	R '65,
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183	1—4	Appn.	201	1, 2	Appn.			ch. 204, § 1
184	1	R '76,	202	1—4	Appn.		4	R '63,
		ch. 95, § 1	203	1, 2	Appn.			ch. 334, § 3
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	3	R '33,	208	1—3	Appn.			ch. 21, § 10
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	4, 5	R '33,	210	1, 2	Appn.		7	R '55,
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		ch. 199, § 18	217	1	68-301			ch. 95, § 1
187	1—8	R '33,		2	68-302	224	1	37-501
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188	1	R '51,			ch. 136, § 12		3	Appn.
		ch. 76, § 16;		4	68-304		4	37-505
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		R '70, ch. 70,		6	68-306		6	37-511
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	8	67-2742			ch. 111, § 5		1, 2	Appn.
	9	67-2743		4	14-113	225	1—4	Appn.
	10	67-2744		5—14	R '71	226	1—4	Appn.
	11	67-2745			ch. 111, § 3	227	1—4	Appn.
	12	Emer.	219	1—7	31-1201—31-1207	228	1—4	Appn.
191	1	R '70,			R '89, ch. 19, § 1	229	1—4	Appn.
		ch. 221, § 1		8	R '95, ch. 206, § 1	230	1—7	R '79,
192	1, 2	R '76,		9	Emer.			ch. 41, § 1
		ch. 95, § 1	220	1	47-701	231	1—3	Appn.
193	1	63-2203		2	47-703	232	1—3	Appn.
194	1—12	R '72,		3	47-704	244	1	R '74,
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2	1	67-4304		3	67-4306	3	1—5	Appn.

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4	1	R '75, ch. 242, § 1	19		19-4519	2		25-308
5	1—7	40-1901—40-1907 R '85, ch. 253, § 1	20		19-4520	57	1	R '75, ch. 242, § 1
	8	Emer.	21		19-4521	58	1	R '75, ch. 260, § 16
6	1	R '31, ch. 18	22		19-4522	59	1	R '47, ch. 260, § 16
7	1, 2	R '76, ch. 95, § 1	23		19-4523	60	1	R '75, ch. 242, § 1
8	1	Rplg.	24		19-4524	61	1—11	R '76, ch. 88, § 1
9	1	Rplg.	25		19-4525	62	1	R '71, ch. 169, § 23
10	1—4	Temp.	26		19-4526	63	1	42-604
11	1	R '67, ch. 429, § 472	27		19-4527		2	42-607
12	1, 2	R '67, ch. 429, § 472	28		19-4528		3	42-608
13	1	43-723, n.	29		19-4529		4	42-609
14	1	50-401	30		19-4530		5	Emer.
15	1—3	R '67, ch. 161, § 10-102	30	1	R '76, ch. 95, § 1	64	1, 2	R '31, ch. 98
16	1	40-1631 R '85, ch. 253, § 1	31	1	40-1605 R '85, ch. 253, § 1	65	1	R '71, ch. 2, § 1
17	1	Rplg.	32	1	R '70, ch. 221, § 1	66	1	58-312
18	1	R '33, ch. 14, § 1	33	1	R '77, ch. 170, § 3	67	1	R '76, ch. 95, § 1
19	1	31-823	34	1—3	Obsolete R '71, ch. 111, § 5		2	R '70, ch. 21, § 9;
20	1	25-2801	35	1	R '29, ch. 280			R '76, ch. 95, § 1
	2	25-2802	36	1	43-610			17-201
	3	25-2803	37	1	42-2905	68	1	Rplg.
	4	25-2804	38	1	Emer. R '79, ch. 41, § 1	69	1	42-701
21	1—3	R '63, ch. 12, § 12	39	1	R '79, ch. 41, § 1		2	42-704, n.
22	1	33-2905			42-612, 42-613; 42-614 R '92, ch.		3	22-304
	2	33-2906			339, § 16; 42-615, 42-616	70	1	22-305
	3	33-2907		2	Emer.		2	22-307
23	1	R '77, ch. 170, § 9	40	1	65-103		3	Emer.
24	1	19-2401	41	1	R '79, ch. 41, § 1	71	1	31-822
	2	Rplg.		2	R '49, ch. 36, § 7	72	1	R '71, ch. 111, § 3
25	1	R '77, ch. 170, § 9		3, 4	R '79, ch. 41, § 1	73	1	40-501 R '85, ch. 253, § 1
26	1	R '71, ch. 111, § 5	42	1	43-315		2	40-802 R '85, ch. 253, § 1
27	1, 2	R '61, ch. 330, § 809	43	1	R '51, ch. 136, § 27	74	1	20-617
28	1	37-330	44	1	19-4528	75	1	R '51, ch. 275, § 12
	2	Emer.		2	Emer.	76	1—3	R '72, ch. 174, § 4;
	3	Rplg.	45	1	R '71, ch. 143, § 5			R '75, ch. 147, § 2
29	1	19-4501	46	1	Rplg.	77	1, 2	R '70, ch. 140, § 210
	2	19-4502	47	1—7	R '67, ch. 429, § 472	78	1	58-317
	3	19-4503	48	1—4	Appn.	79	1	33-2810
	4	19-4504	49	1—5	Appn.	80	1	67-1017
	5	19-4505	50	1	R '71, ch. 87, § 1	81	1	42-610
	6	19-4506			9-202	82	1	R '69, ch. 113, § 14
	7	19-4507	51	1	18-1003	83	1	R '70, ch. 140, § 207;
	8	19-4508	52	1	42-2961			'70, ch. 228, 2
	9	19-4509	53	1	R '75, ch. 242, § 1	84	1	R '69, ch. 455, § 83
	10	19-4510	54	1	25-402	85	1	Appn.
	11	19-4511	55	1	Emer.			
	12	19-4512	56	1	25-307			
13—15		R '79, ch. 228, § 1						
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86	1	R '69, ch. 43, § 36	113	1—6	R '69, ch. 113, § 3	154	4	36-3304
87	1	R '33, ch. 46, § 24	114	1—5	Appn.	1—9		R '69, ch. 142, § 12
	2	R '33, ch. 46, § 24	115	1	43-324	10		57-127
88	1—23	R '67, ch. 161, § 10-102	116	1	39-1703 R '91, ch. 142, § 1	11		R '69, ch. 142, § 12
	24	R '79, ch. 105, § 1	117	1	59-501	12		57-134
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89	1	R '69, ch. 331, § 12	119	1	R '69, ch. 466, § 15	155	1	6-103
	2	R '83, ch. 38, § 10	120	1	58-304	156	1	31-2602
	3	R '77, ch. 133, § 1	121	1	R '63, ch. 13, § 236	2		Emer.
91	1	R '63, ch. 345, § 1	122	1	R '71, ch. 2, § 1	157	1	43-1201
92	1	R '55, ch. 259, § 43	123	1—4	Appn.	158	1, 2	R '67, ch. 429, § 472
93	1—3	R '75, ch. 242, § 1	124	1—4	Appn.	159	1	31-808
	4	5-508	125	1	53-103	2		31-836
	5	5-509	126	1	R '79, ch. 105, § 1	160	1	R '76, ch. 95, § 1
94	1, 2	R '71, ch. 111, § 5	127	1	R '71, ch. 111, § 5	161	1	R '71, ch. 143, § 5
95	1	R '47, ch. 92, § 2	128	1	45-914	162	1—4	Appn.
96	1, 2	Temp.	129	1	67-1212	163	1—5	R '41, ch. 45, 1
97	1	R '29, ch. 278		2	Emer.	164	1	R '33, ch. 160, § 9
98	1	37-503	130	1	R '37, ch. 39, § 3	165	1	R '71, ch. 111, § 3
	2	Emer.		2	R '37, ch. 39, § 3	166	1—4	Appn.
99	1—4	Appn.	131	1	R '80, ch. 117, § 3	167	1	R '55, ch. 259, § 42
100	1	33-2809	132	1	R '61, ch. 224, § 1		2	16-1706, 16-1707
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102	1—3	Appn.	133	1—4	Appn.	168	1—4	Appn.
103	1—4	Appn.	134	1, 2	Appn.	169	1	R '55, ch. 259, § 42
104	1—4	Appn.	135	1	19-2402	170	1	R '63, ch. 13, § 236
105	1	R '37, ch. 131, § 23		2	19-2402, n.	171	1, 2	R '29, ch. 204
106	1—14	R '71, ch. 124, § 2		3	Emer.	172	1	R '31, ch. 98
	15	R '21, ch. 217	136	1, 2	Appn.	173	1—5	Appn.
	16	R '21, ch. 217	137	1	R '29, ch. 109	174	1—5	Appn.
	17	R '71, ch. 124, § 2	138	1, 2	R '78, ch. 168, § 1	175	1	67-904
	18	72-913	139	1	67-1601	2		Emer.
	19—21	R '71, ch. 124, § 2	140	1	43-722	176	1—3	Appn.
	22	Emer.	141	1	56-131	177	1—3	Appn.
107	1, 2	Appn.	142	1	43-1603	178	1—4	Appn.
108	1	R '53, ch. 11, § 1		2	Emer.	179	1	42-2954
109	1	Rplg.	143	1—4	R '29, ch. 225	180	1	R '63, ch. 13, § 236
110	1	65-301	144	1—4	Appn.	181	1	R '71, ch. 124, § 2
	2	65-302	145	1	63-105	182	1	45-302 R '89, ch. 359, § 1; 45-303 R '89, ch. 359, § 1; 45-304 R '89, ch. 359, § 1; 45- 305 R '89, ch. 359, § 1; 45-306 R '89, ch. 359, § 1; 45-307 R '89, ch. 359, § 1; 45- 308 R '89, ch. 359, § 1
	3	65-303	146	1, 2	R '61, ch. 330, § 809			
	4	Rplg.	147	1	Temp.			
111	1	5-326		2	Emer.			
	2	Rplg.	148	1—3	R '29, ch. 167			
112	1	R '49, ch. 205, § 4	149	1—3	Appn.			
			150	1—3	Appn.			
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185	1, 2	R '63,		6	67-2014	217	1	37-601
		ch. 13, § 236		7	67-2015		2	R '70,
186	1	R '29, ch. 181	202	1	R '76,			ch. 39, § 2
187	1	R '49,			ch. 95, § 1		3	37-604
		ch. 283, § 1	203	1	R '33,		4	37-605
	2	4-105			ch. 46, § 24		5	37-603
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		ch. 283, § 4			ch. 46, § 24	218	1	58-313
188	7[1], 2	R '69,	204	1—5, 6	R '70,		2	58-314
		ch. 466, § 15			ch. 149, § 1	219	1, 2	R '79,
189	1, 2	Appn.	205	1—18	R '47,			ch. 105, § 1
190	1—8	Temp.			ch. 122, § 1	220	1	58-316
191	1—3	Appn.	206	1	R '51,	221	1	37-1002
192	1	R '33,			ch. 75, § 29		2	Emer.
		ch. 149, § 1	207	1	43-305	222	1	22-2001
	2	R '33,	208	1, 2	Temp.		2	22-2002
		ch. 149, § 1		3	Emer.		3	22-2003
	3	R '33,	209	1	68-201		4	22-2004
		ch. 149, § 1	210	1	R '29, ch. 262		5	22-2005
	4	R '33,	211	1	25-2807		6	22-2006
		ch. 149, § 1		2	Rplg.		7	Rplg.
193	1	R '63,	212	1	R '43,	223	1, 2	Temp.
		ch. 13, § 236			ch. 10, § 4	224	1—7	Appn.
194	1	43-708	213	1	42-1301		7	Emer.
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195	1	R '51,		3	42-1303	226	1—4	R '80, ch. 246, § 1
		ch. 47, § 17		4	42-1304	227	1-3	R '47,
196	1	31-831 R '89, ch.		5	42-1305			ch. 53, § 46
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		74, § 6,		8	R '77,	230	1, 2	Temp.
		31-833 R '89, ch.			ch. 247, § 2	231	1, 2	R '33,
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	6	27-107		8	**49-520		5	Rplg.
	7	27-108		9	R '41,	234	1—5	R '87, ch. 120,
	8	27-109			ch. 144, § 5			§ 12
	9	27-110		9A	49-423 R '88, ch.	235	1—3	R '61,
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	11	27-112		10	R '41,	236	1—16	R '35,
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	12	27-114		13	§ 5	237	1—7	R '29, ch. 267
	13	27-115		14, 15	R '74,	238	1, 2	Appn.
	14	27-116			ch. 27, § 1	239	1—3	Appn.
	15	27-117		16	**49-521	240	1—3	Appn.
	16	27-118		17	R '41,	241	1	R '76,
	17	27-119			ch. 144, § 5			ch. 95, § 1
	18	27-120		18	R '41,		2	Rplg.
	19	27-121			ch. 144, § 5		3	R '45,
	20	27-122	214	19	49-427 R '88, ch.			ch. 199, § 18
	21	27-123			265, § 69		4	R '45,
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	3 49-118 R '85, ch. 117, § 2			16	Rplg.		2	14-402 R '88, ch. 300, § 2
	4 **49-432		207	1—3	Appn.		3	14-404 R '88, ch. 300, § 2
	5 49-135 R '85, ch. 117, § 2		208	1	22-201		4	14-405 R '88, ch. 300, § 2
	6 49-147 R '88, ch. 265, § 1			2	22-202		5	14-406 R '88, ch. 300, § 2
	7 40-2211 R '83, ch. 179, § 4			3	22-203		6	14-407 R '88, ch. 300, § 2
	8 R '41, ch. 144, § 5			4	22-204		7	14-408 R '88, ch. 300, § 2
	9 49-423 R '88, ch. 265, § 69			5	22-205		8	14-410 R '88, ch. 300, § 2
	10 1953, ch. 273, § 192			6	22-206			
	11 Emer.			7	22-207			
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				9	Emer.			
			209	1, 2	Appn.			
			210	1, 2	Appn.			
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			212	1	42-203			
			213	1	20-627			
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			214	1	R '67, ch. 429, § 472			
			215	1	R '65,			

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	10	14-412 R '88, ch. 300, § 2	254	1	63-413 R '65, ch. 28, § 7		8	54-808
							9	54-809
	11	14-413 R '88, ch. 300, § 2	255	1	45-108		10	54-810
			256	1	R '67, ch. 161, § 10-102		11	54-811
	12	14-414 R '88, ch. 300, § 2	257	1, 2	R '71, ch. 111, § 5		12	54-812
				3, 4	R '71, ch. 111, § 3		13	54-813
	13	R '72, ch. 202, § 10	258	1	R '49, ch. 161, § 3		14	54-814
	14	14-416 R '88, ch. 300, § 2	259	11-6	Temp.		15	54-815
			260	1—8	R '21, ch. 220		16	54-816
	15	14-417 R '88, ch. 300, § 2	261	1	54-503 R '90, ch. 163, § 2		17	54-817
				2	54-504		18	54-818
	16—21	R '71, ch. 111, 4		3	54-505 R '90, ch. 163, § 2		19	54-819
				4	54-506		20	54-820
	22	14-424 R '88, ch. 300, § 2		5	54-507		21	54-821
				6	54-512		22	54-822
	23	14-425 R '88, ch. 300, § 2		7	R '95, ch. 77, § 2		23	54-823
				8	54-519		24	54-824
				9	54-521		25	Rplg.
	24	14-426 R '88, ch. 300, § 2		10	54-524		26	54-825
			262	1—3	R '79, ch. 105, § 1		27	54-826
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	25	14-427 R '88, ch. 300, § 2		4	R '79, ch. 105, § 1	267	1	61-801
				5—50	R '69, ch. 453, § 19		2, 3	R '51, ch. 291, § 7
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	27	14-430 R '88, ch. 300, § 2	263	1	63-1203		4	61-808
				2	63-1204		5	61-809
	28	Obsolete		3	63-1205		6	61-810
	29	Emer.		4	63-1206		7	R '51, ch. 291, § 12
244	1—3	Temp.		5	63-1210		8	61-812
245	1	25-402		6	63-1211		9	61-813
	2	Emer.		7	63-1212		10	61-814
	17	R '95, ch. 77, § 2		8	63-1213		11	61-814, n.
246	1	22-2608		9	63-1217		12	Rplg.
	2	22-2609		10	63-1218		13	61-815
	3	22-2610		11	63-1220		14	61-816
	4	22-2613		12	R '49, ch. 4, § 1		15	61-817
	5	Emer.		13	61-1301 to 63-1310	268	1	27-113
247	1, 2	Temp.		14	R '71, ch. 87, § 1		2	27-101
248	1	R '47, ch. 53, § 46		15	R '69, ch. 455, § 83		3	27-102
	2	Emer.			Rplg.		4	27-104
249	1	43-2007		16—20	R '67, ch. 429, § 472		5	27-105
250	1—5	R '67, ch. 161, § 10-102	264	1	54-801	269	1	33-2908
					54-802		2	Emer.
	6	45-1104, n.		21	54-803	270	1—10	R '29, (E.S.), ch. 3
		45-1105, n.		22	54-804	271	1—3	Appn.
	7	Rplg.			54-805	272	1, 2	R '47, ch. 53, § 46
251	1	R '67, ch. 161, § 10-102	265	1		273	1	R '47, ch. 53, § 46
						274	1	**49-2416
252	1—7	R '69, ch. 455, § 83		2		275	1, 2	Temp.
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253	1	63-401		4		277	1, 2	Spec.
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	3	63-403				279	1—12	R '71, ch. 111, § 5
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		ch. 111, § 5	282	1—3	R '79,			ch. 21, § 1
	19	15-1206			ch. 105, § 1			
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2	1	63-1206			ch. 159, § 2	40	1	58-603
	2	63-102	22	1	43-313	41	1	Rplg.
	3	Emer.	23	1	25-1901	42	1—4	Appn.
3	1, 2	Appn.	24	1	17-106	43	1	27-109
4	1	58-325 R '92, ch.	25	1—4	Appn.	44	1	R '75,
		241, § 1	26	1	63-2213			ch. 242, § 1
	2	Emer.		2	Emer.	45	1, 2	R '67,
5	1	**49-430	27	1	R '75,			ch. 429, § 472
	2	Emer.			ch. 242, § 1	46	1	R '76,
6	1—4	Spec.	28	1	R '75,			ch. 95, § 1
7	1	69-202			ch. 242, § 1	47	1	43-1312
8	1	67-509	29	1, 2	R '63,	48	1	31-2402
9	1	R '75,			ch. 345, § 1	49	1	Rplg.
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10	1	R '75,		2	62-1102			ch. 52, § 24
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		ch. 242, § 1		3	49-1703 R '88, ch.			ch. 32, § 14
14	1	Rplg.			265,	56	1	R '63,
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15	1	R '71,	33	1	40-1701—40-1714	57	1—4	R '55,
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16	1—26	R '37,			ch. 253, § 1	58	1	25-2116
		ch. 216, 42	34	1	43-801	59	1—4	Appn.
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18	1—23	R '70,		3	43-803			ch. 161,
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20	1	R '45,	37	1	43-1827		2	Rplg.
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67	1	R '53, ch. 273, § 192	98	1—3	253, § 1 R '51, ch. 273, § 9	118	1—5	Appn.
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68	1—4	R '33, ch. 46, § 24		4	R '47, ch. 57, § 6	120	1—4	Appn.
69	1—4	Appn.		5, 6	R '51, ch. 273, 9	121	1	R '39, ch. 249, § 7
70	1—4	R '37, ch. 43, § 6		7, 8	R '47, ch. 57, § 6	122	1	31-1601
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72	1—4	R '69, ch. 142, § 12		11—18	R '47, ch. 57, § 6		3	31-1603
73	1, 2	R '71, ch. 143, 5			R '51, ch. 273, § 9		4	31-1604
74	1, 2	Appn.	99	1	R '71, ch. 111, § 5		5	31-1605
75	1	67-4502					6	31-1606
76	1	R '71, ch. 111, § 3	100	1	21-201		7	31-1607
77	1	32-701		2	21-202		8	31-1608
78	1, 2	Spec.		3	21-203		9	31-1609
79	1	R '69, ch. 331, § 12		4	21-204		10	R '95, ch. 61, § 21
80	1, 2	R '43, ch. 139, § 6		5	21-205		11	31-1611
81	1	Spec.		6	21-206		12	31-1612 R '91, ch. 43, § 1
82	1	63-611		7	21-207		13	31-1613
83	1—5	R '37, ch. 238, § 1	101	1—5	21-208		14	31-1613, n.
84	1—4	Appn.			21-209		15	Rplg.
85	1	63-1140	102	1	21-210	123	1	R '63, ch. 13, § 236
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		100, § 9	103	1	Spec.	125	1	43-701
	3	Emer.	104	1	Spec.	126	1	43-324
86	1	65-103	105	1	63-1904		2	Emer.
87	1—4	R '63, ch. 13, § 236	106	1	67-4503	127	1—3	R '71, ch. 143, § 5
88	1	R '43, ch. 139, § 6	107	1	63-913	128	1—4	Appn.
	2	R '95, ch. 57, § 1	108	1	Spec.	129	1, 2	Appn.
	3	Emer.			R '67, ch. 429, § 472	130	1, 2	Appn.
89	1—5	Appn.	109	1	31-1008	131	1	14-417 R '88, ch. 300, § 2
90	1	R '50 (E.S.), ch. 87, § 24		2	31-1009		2	Emer.
91	1	R '71, ch. 143, § 5		3	31-1010	132	1, 2	R '57, ch. 150, § 1
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93	1—7	R '67, ch. 212, § 1	110	1, 2	R '67, ch. 161, § 10-102	133	1—4	Appn.
	8	Appn.	111	1	47-310	134	1, 2	R '63, ch. 13, § 236
	9	R '67, ch. 212, § 1		2	47-311	135	1	**49-2415 (1st para.)
	10	Emer.		3	47-312		2	**49-2415 (2nd para.)
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	2	Emer.			47-314	137	1	22-206
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		R '85, ch. 253, § 1	113	1	R '76, ch. 95, § 1	139	1	R '69, ch. 453, § 19
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154	1	40-2211			ch. 161, § 10-102			ch. 157, § 1
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158	1	54-403 R '92, ch.		3	46-114			40, § 1
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	7	54-417 R '92, ch.		3, 4	R '45,	206	1—3	Appn.
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	8	54-419 R '92, ch.		5, 6	R '76,	208	1, 2	Appn.
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160	1	R '63,	189	1	49-127 R '84, ch.		2—7	R '76,
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165	1	R '67,	193	1—3	Appn.		3	R '45,
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3	1	43-716	22	1	47-201	41	1—5	63-1144 n.
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8	1	32-403	24	1	Rplg.			R '39,
9	1	58-313		2	Spec.	45	1, 2	ch. 186, § 1
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17	1	R '71,		2	**49-2421			ch. 5, § 1
		ch. 169, § 23		3	**49-2422		3	37-515
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18	1	49-1301 R '83, ch. 179, § 4	35	1	R '72,			2nd E. S.), ch. 4,
	2	R '80, ch. 266, § 1			ch. 401, § 4		5	R '67,
	3	Emer.	36	1	R '70,			ch. 212, § 1
19	1	40-2212 R '85, ch. 253, § 1			ch. 140, § 210		6	Emer.
	2	Emer.	37	1	67-3101 n.			R '74,
20	1—4	63-3301—63-3304 R '89, ch. 100, § 12		2	Emer.	48	1, 2	ch. 18, § 1
			38	1	57-211			R '35,
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50	1—5	Appn.			ch. 401, § 4	120	1	40-701 R '85, ch. 253, § 1
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52	1	22-1911 R '88, ch. 297, § 7	85	1	22-206 Emer.		2	Emer.
53	1	R '49, ch. 274, § 5	86	1, 2	R '71, ch. 111, § 5	122	1—4	Appn.
54	1—4	Appn.	87	1—3	Spec.	123	1, 2	Appn.
55	1—4	Appn.	88	1	63-1124 R '88, ch. 371, § 2	124	1—7	73-108n.
56	1—4	Appn.				125	1	R '49, ch. 274, § 4
57	1—4	Appn.	89	1, 2	Appn.	126	1	**49-432
58	1—6	Appn.	90	1	R '69, ch. 142, § 12		2	Emer.
59	1	R '49, ch. 205, § 5				127	1	33-3714
60	1, 2	R '79, ch. 41, § 1				128	1—5	R '67, ch. 394, § 59
61	1	R '75, ch. 242, § 1	91	1—3	R '37, ch. 131, § 23	129	1	R '35, ch. 131, § 13
62	1	61-128	92	1—3	R '95, ch. 56, § 1		2	Emer.
63	1	30-1301	93	1	R '63, ch. 13, § 236	131	1	Rplg.
	2	30-1302					2	40-1601 R '85, ch. 253, § 1
	3	30-1303	94	1—4	Appn.		3	40-1654 R '85, ch. 253, § 1
	4	Emer.	95	1, 2	Appn.			
64	1—4	Appn.	96	1	R '69, ch. 331, § 12		4	Rplg.
65	1—4	Appn.				132	1, 2	R '74, ch. 40, § 1
66	1—4	Appn.						
67	1, 2	Appn.				133	1, 2	R '69, ch. 244, § 1
68	1, 2	Appn.	97	1	R '78, ch. 348, § 3			
69	1—9	R '69, ch. 87, § 34	98	1, 2	Appn.	134	1—3	Appn.
70	1	10-1201	99	1	R '76, ch. 95, § 1	135	1	31-401
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	3	10-1203	100	1—6	Appn.		3	31-403
	4	10-1204	101	1	42-2208		4	31-404
	5	10-1205	102	1	57-130		5	31-405
	6	10-1206					6	31-406
	7	10-1207	103	1	Emer. R '74, ch. 24, § 1		7	31-407
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	9	10-1209	104	1—8	R '63, ch. 13, § 236		9	31-409
	10	10-1210					10	31-410
	11	10-1211	105	1—4	R '55, ch. 36, § 1		11	31-411
	12	10-1212					12	31-412
	13	10-1213	106	1—3	Appn.		13	31-413
	14	10-1214	107	1	47-703		14	31-414
	15	10-1215	108	1	Rplg.		15	31-415
	16	10-1216	109	1	43-113		16	31-416
71	1, 2	R '79, ch. 41, § 1	110	1—12	R '47, ch. 243, § 39	136	1	R '95, ch. 153, § 1
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				5[6]	44-1004 n.	139	1	R '49, ch. 205, § 4
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77	1—4	Appn.	112	1	43-803	140	1	63-601
78	1	R '74, ch. 54, § 1	113	1—15	R '53, ch. 241, 1		2	R '65, ch. 312, § 32
						141	1—4	R '53, ch. 23, § 1
79	1	58-314	114	1	58-304			
80	1	Rplg.						
81	1	R '76, ch. 95, § 1	115	1	Emer. Rplg.	142	1—7	Temp.
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148	1, 2	Obsolete	165	1	67-3201 R '85, ch. 253, § 1	181	1	27-201
149	1	Rplg.	166	1—3	Appn.		2—4	27-202—27-204 R '91, ch. 42, § 2
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150	1	6-108		3	69-207	182	1	R '75, ch. 242, § 1
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152	1	R '63, ch. 13, § 236		7	69-223		2	R '47, ch. 111, § 29
153	1	31-1901		8	69-233 R '82, ch. 25, § 1	185	1—7	R '70, ch. 140, § 207
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154	1	60-107		1—3	Appn.		12	R '63, ch. 93, § 1
	2	60-108	169	1—3	Appn.	186	1—15	R '51, ch. 47, § 17
155	1—3	R '35, ch. 153, § 2	170	1, 2	Appn.	187	1—25	R '51, ch. 47, § 17
156	1	63-902	171	1—3	R '53, ch. 273, § 192	188	1—16	R '41, ch. 115, § 26
157	1—8	33-913 n.	172	1—15	R '63, ch. 52, § 24	189	1, 2	Appn.
158	1	Rplg.		1	**25-1144	190	1	R '41, ch. 144, § 5
159	1—8	R '59, ch. 299, § 82	173	2	**25-1145		2	R '41, ch. 144, § 5
	9—21	R '59, ch. 299, § 82		3	25-1805 R '91, ch. 37, § 1		3	**49-521
160	1	63-3101		4	R '76, ch. 88, § 1	191	1—3	R '67, ch. 161, § 10-102
	2	63-3102		5	Emer.	192	1, 2	R '61, ch. 152, § 10
	3	63-3103	174	1	43-2101	193	1	42-222
	4	63-3104		2	43-2102	194	1	43-2001
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	6	63-3106		4	43-2104		3	43-2003
	7	63-3107		5	43-2105		4	43-2004
	8	63-3108		6	43-2106		5	Rplg.
	9	Rplg.		7	43-2107		6	Emer.
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	4	R '74, ch. 204, § 1	176	1, 2	Appn.		1	28-22-104
	5	R '43, ch. 193, § 13	177	1	49-101 R '88, ch. 265, § 1		2	R '79, ch. 34, § 1
	6	R '63, ch. 334, § 3		1, 2	Appn.		3	R '83, ch. 119, § 2
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	13	R '45, ch. 199, § 18	179	1	34-2201	198	1	63-2202
	14	R '45, ch. 199, § 18		2	34-2202		2	Emer.
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	18	R '45, ch. 199, § 18		4	34-2204	200	1	31-836
	19	R '45, ch. 199, § 18		5	34-2205		2	Emer.
	20—24	R '76, ch. 95, § 1		6	34-2206	201	1	R '76, ch. 88, § 1
162	1—3	R '49, ch. 44, § 6		7	34-2207		1, 2	R '76, ch. 95, § 1
163	1	Rplg.		8	34-2208	202	1	R '47, ch. 153, § 24
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207	1	43-611		18	34-1818	216	1—10	R '74,
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3	1—15	R '35,	8	1	63-902			ch. 466, § 15
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4	1	Appn.	10	1—8	R '79,	16	1, 2	Obsolete
5	1	67-1212			ch. 41, § 1	17	1—13	R '49,
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6	1	63-3204 R '83,	12	1	67-1205			
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2	1—12	63-1144n.		4	67-4404	10	1	19-3004
3	1	68-401		5	67-4405		2	19-3005
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4	1	67-2741	7	1	R '37,	13	1	R '53,
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5	1	67-4401	8	1	3-403	14	1	R '76,
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16	1	67-4504		2	Emer.	75	1—4	R '37,
17	1—5	50-2943 n.	48	1, 2	Spec.			ch. 142, § 7
18	1	31-703	49	1	42-2931	76	1	31-819
19	1	45-909	49	2	42-2952	77	1	30-904
20	8	Rplg.		3	42-2954	78	1	8-507
21	1	31-2305		4	42-2956		2	Emer.
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25	1	31-3101			ch. 111, § 5	84	1	R '63,
26	1, 2	Spec.	53	1	58-314			ch. 13, § 236
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	2	Emer.	54	1	42-2976			ch. 161,
28	1	54-501		2	42-2977			§ 10-102
	2	54-505 R '90, ch. 163, § 2		3	Emer.	86	1	60-106
	3	54-506	55	1	42-2936	87	1	45-806
	4	54-507		2	42-2958		2	Rplg.
	5	54-509	56	3	Emer.	88	1—6	49-301—49-306
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	8	54-521		3	42-2973		8	**49-302
	9	54-527		4	42-2974		9	**49-303
	9	54-528		5	42-2975		10	**49-304
	9	54-529		6	Emer.		11	**49-305
29	1	53-301	57	1	42-2967		12	**49-306
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	31	Rplg.		6	31-3709		37	67-2725
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98	1	37-314		8	Rplg.		39	57-127
99	1	31-2124		9	Emer.		40	57-130
	2	31-2125	126	1	68-401		41	Emer.
	3	Rplg.		2	68-402		42	67-2725
	4	Emer.	127	1	68-401		43	R '83, ch. 38, § 10
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139	1	22-1301	140	1	44-1001—			ch. 113, § 14
	2	22-1302			44-1004	149	1	9-304
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	6	22-1307			ch. 66, §§ 1, 2	150	1	30-905
	7	22-1308	143	1	R '63,	151	1—3	R '74,
	8	22-1309			ch. 13, § 236			ch. 24, § 1
	9	22-1310	144	1, 2	R '79,	152	1	49-135 R '85, ch.
	10	22-1311			ch. 41, § 1			117, § 2
	11	22-1312	145	1	42-202		2	Emer.
	12	22-1313		2	**42-203A	153	1—3	R '63,
	13	22-1314		3	42-204			ch. 217, § 1
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	2	241, § 1	28	1—4	Appn.			30-1618
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2	1—7	Temp.	30	1—3	R '59,		2	33-3802
3	1—3	57-201 n.			ch. 299, § 82		3	33-3803
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6	1	58-132	33	1—4	Appn.		6	33-3806
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9	1—11	R '79,	43	1—4	Appn.		15	Emer.
		ch. 41, § 1	44	1—4	Appn.	56	1	14-407 R '88, ch.
10	1—5	Appn.	45	1—4	Appn.			300,
11	1—3	S. 56-401—	46	1—3	Appn.		2	14-407 R '88, ch.
		56-407	47	1, 2	Appn.			300,
12	1—35	R 'Referendum	48	1—3	Appn.			§ 2
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13	1—4	Appn.	50	1—3	Appn.			300,
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19	1—4	Appn.		4	31-904		6	R '39,
20	1—4	Appn.		5	31-905			ch. 149, § 1
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60	1—22	Unconst.	65	1	47-1201		6	47-1206
61	1—4	Appn.		2	47-1202		7	R '69,
62	1, 2	R '79,		3	47-1203			ch. 311, § 3
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	5	**49-1104			ch. 87, § 24	9	1, 2	Spec.
	6	49-1806 R '84,		2	Emer.	10	1, 2	Spec.
		ch. 195, § 1	5	1	67-3201 R '85, ch. 253, § 1	11	1—3	Appn.
	7	**49-1105	6	1, 2	R '67,	12	1—3	Appn.
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3	1—4	Appn.	8	1—5	Appn.			ch. 203, § 11
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5	1—5	Spec.	17	1, 2	R '71,		6	70-406
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7	1	47-612	18	1, 2	Spec.		8	Emer.
8	1	R '67,	19	1, 2	Appn.	28	1	57-1201
		ch. 429, § 472	20	1	49-342 R '88, ch. 265,		2	57-1202
9	1—4	R '45,			§ 34		3	57-1203
		ch. 203, § 11	21	1	45-1302	29	1	R '70,
10	1—4	R '63,			6-401			ch. 140, § 206
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11	1—4	R '53,	23	1	42-614 R '92, ch. 339, § 16			ch. 95, § 1
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		ch. 170, § 9	25	1		32	1, 2	R '61,
13	1—4	36-2202 n.	26	1				ch. 330, § 809

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33	1	R '61, ch. 330, § 809	64	1, 2	Rplg. 11-402	95	1	R '69, ch. 469, § 2
34	1	**49-2420-49- 2423		3	33-911		2	R '39, ch. 27, § 2
35	1	57-104		2	33-911 n.		3	R '39, ch. 27, § 2
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36	1	49-337 R '83 (E.S.), ch. 3, § 6	67	1	R '72, ch. 91, § 1		7	R '39, ch. 27, § 2
37	1-4	Appn.	68	1, 2	Appn.		8, 9	R '69, ch. 469, § 2
38	1	28-102	69	1, 2	R '67, ch. 429, § 472			
39	1	43-1508	70	1	63-2801	96	1	**49-2401
	2	43-1601	71	1	R '71, ch. 124, § 2		2	**49-2402
	3	Rplg.					3	**49-2403
	4	Rplg.	72	1-4	39-801-39-804 R '82, ch. 358, § 1		4	**49-2404
40	1	R '53, ch. 273, § 192					5	**49-2405
41	1, 2	R '67, ch. 429, § 472					6	**49-2406
42	1, 2	R '70, ch. 140, § 207		5-7	39-805-39-807 R '82, ch. 358, § 1		7	**49-2407
43	1-7	R '39, ch. 189, § 6		8	39-808		8	**49-2408
44	1	23-1013 n.		***9, 10	39-809 R '82, ch. 358, § 1;		9	**49-2409
45	1-6	R '70, ch. 140, § 212			39-810 R '82, ch. 358, § 1		10	**49-2410
46	1-3	R '71, ch. 143, § 5	73	1	31-3106		11	**49-2411
47	1, 2	R '79, ch. 41, § 1	74	1-4	Appn.		12	**49-2412
48	1, 2	R '39, ch. 222, § 107	75	1	14-417 R '88, ch. 300, § 2		13	49-1913 R '88, ch. 265, § 437
49	1	Appn.	76	1	R '76, ch. 95, § 1	97	1	R '47, ch. 44, § 1
50	1-3	R '61, ch. 330, § 809	77	1, 2	R '77, ch. 204, § 1	98	1	57-133
51	1	Spec.	78	1-3	22-1904 n.		2	57-134
52	1	Appn.	79	1, 2	Appn.		3	Rplg.
53	1-3	R '71, ch. 111, § 5	80	1-3	R '74, ch. 18, § 1	99	1, 2	Eff. date R '79, ch. 41, § 1
				4	Appn.	100	1	67-2743
54	1	R '70, ch. 140, § 207		5	Temp.		2	67-2744
55	1	31-2109	81	1	R '74, ch. 302, § 11		3	Rplg.
		R '94, ch. 35, § 1	82	1	31-808		4	Eff.
56	1	49-127 R '84, ch. 195, § 1	83	1	63-903	101	1-4	Appn.
	2	Temp.	84	1	R '55, ch. 38, § 1	102	1-4	Appn.
	3	Rplg.	85	1	R '67, ch. 181, § 21	103	1	40-1209 R '85, ch. 253, § 1
	4	Emer.	86	1	42-2966		2	Emer.
57	1	R '67, ch. 120, § 1	87	1-4	Appn.	104	1	R '78, ch. 348, § 3
58	1	40-2206 R '85, ch. 253, § 1	88	1	R '63, ch. 169, § 3	105	1, 2	R '50, (1st. E. S.), ch. 50, § 26; '51, ch. 250, § 27
	2	Emer.		2	31-3201	106	1, 2	R '70, ch. 140, § 208
59	1	21-401	89	1, 2	58-329, 58-330 R '92, ch. 241, § 1			
	2	R '67, ch. 429, § 472		3	Emer.	107	1	R '55, ch. 176, § 5
	3	Emer.	90	1-3	R '67, ch. 429, § 472		2	37-332
60	1	19-3921					3	37-335
	2	50-131	91	1	R '49, ch. 205, § 5	108	1	R '49, ch. 44, § 6
	3	Emer.				109	1	22-1401 R '82, ch. 94, § 1
61	1, 2	R '71, ch. 111, § 5	92	1	63-1119		2	22-1403 R '82, ch. 94, § 1
62	1	68-404	93	1, 2	R '59, ch. 299, § 82			
63	1, 2	R '39, ch. 207, § 3	94	1	32-701			

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112	1	63-107		4	**25-1145			ch. 216, § 11
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119	1—4	Appn.			64, § 1	180	1—4	Appn.
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122	1—4	Appn.		6	42-210	185	1—3	22-1904 n.
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	3	47-714	144	1	R '86, ch. 172, § 1			ch. 203, § 11
	4	47-715		2	R '86, ch. 80, § 1	188	1, 2	R '45,
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126	1—6	R '76,	149	1—4	Appn.	193	1	R '95, ch. 206, § 1
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127	1	R '71,	151	1, 2	R '63,		3	R '39,
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128	1	43-730	152	1—4	R '49,		4	Emer.
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129	1—6	R '70,	153	1—4	Appn.			ch. 23, § 1
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	6	47-806	161	1—4	Appn.			ch. 32, § 14
	7	47-807	162	1—4	Appn.	197	1—4	Appn.
	8	47-808	163	1—4	Appn.	198	1	R '67,
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	10	47-810	165	1, 2	Appn.	199	1	R '72,
	11	Rplg.	166	1—5	47-101 n.			ch. 401, § 4
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132	1	30-515		2	Emer.		2	58-502
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203	1—3	57-201 n.	223	1, 2	Temp.			ch. 94, § 2
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209	1—4	Appn.		6	48-206		5	63-1505
210	1	32-715		7	Rplg.		6	Emer.
211	1, 2	R '67,	230	1—5	Appn.	247	1—4	Appn.
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19	1—5	R '70, ch. 70, § 28
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23	1	40-2001 R '85, ch. 253, § 1
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24	1	R '42, ch. 32, § 14
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29	1	54-508 R '82, ch. 131, § 1
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	13	Rplg.		3	22-903	63	1	67-2201
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12	1, 2	R '59, ch. 299, § 82		6	22-906		4	Rplg.
13	1	R '61, ch. 330, § 809		7	22-907	64	1	40-1618 R '85, ch. 253, § 1
14	1, 2	R '67, ch. 120, § 1		8	22-908			
15	1, 2	Spec.		9	22-909	65	1	R '45, ch. 203, § 11
16	1	Rplg.		10	22-910	66	1—4	R '74, ch. 302, § 11
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17	1	R '49, ch. 161, § 3		12	22-912	67	1	R '67, ch. 429, § 472
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19	1	72-901		15	22-915	69	1	19-701
20	1	72-902	33	1	R '61, ch. 330, § 809		2	19-702
	2	72-903	34	1	62-502 R '91, ch. 30, § 14		3	19-703
	3	72-904	35	1	R '76, ch. 95, § 1		4	19-704
	4	72-905	36	1	43-207		5	19-705
	5	72-906	37	1, 2	R '63, ch. 363, § 15		6	19-706
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	7	72-908	38	1, 2	R '67, ch. 429, § 472		8	19-707
	8	72-909					9	Emer.
	9	72-911	39	1	R '79, ch. 41, § 1	70	1	59-501
	10	72-912	40	1, 2	R '63, ch. 13, § 236		2	Eff. date
	11	72-913				71	1	38-501
	12	72-914	41	1	63-2705		2	38-502
	13	72-915		2	Emer.		3	38-503
	14	R '51, ch. 269, § 1	42	1—3	R '59, ch. 299, § 82		4	38-504
	24	R '71, ch. 124, § 2					5	38-505
	15	72-917	43	1	Rplg.		6	38-506
	16	72-918		2	Emer.		7	38-507
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74	1	67-3509		4	30-204			48-411
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75	1	67-3516		6	30-206		2	45-702
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	4	67-3519		3	21-405		5	45-705
	5	R '95, ch. 153, § 1		4	21-406		6	Emer.
	6	67-3521		5	Emer.	119	1	55-811
	7	R '95, ch. 153, § 1	104	1, 2	R '47, ch. 53, § 46		2	Emer.
	8	67-3523 R '73, ch. 300, § 13	105	1	43-713	120	1, 2	R '74, ch. 48, § 1
	9	Emer.		2	43-714	121	1	46-702
76	1, 2	R '76, ch. 95, § 1		3	Emer.	122	1, 2	R '63,
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	3	66-1003	107	1	25-402	125	1—3	Appn.
	4	66-1004	108	1	Local	126	1, 2	R '49, ch. 205, § 4
	5	66-1005	109	1—9	R '45, ch. 118, § 1	127	1—7	R '75, ch. 177, § 1
	6	66-1006	110	1—5	R '59, ch. 299, § 82	128	1, 2	R '47, ch. 53, § 46
	7	Rplg.	111	1—6	42-2001 n.	129	1	R '95, ch. 206, § 1
80	1	R '67, ch. 429, § 472	112	1	72-919	130	1	Rplg.
				2	Emer.		2	Emer.
81	1	R '74, ch. 34, § 1	113	1—3	R '73, ch. 260, § 2	131	1—11	R '71, ch. 111, § 5
82	1	67-2402	114	1—11	R '47, ch. 243, § 39	132	1	R '76, ch. 95, § 1
	2, 3	R '74, ch. 40, § 1					2	R '57, ch. 70, § 1
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	5	Rplg.		2	54-1902	133	1—4	33-3101 n.
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85	1	63-1222		7	54-1907		2	56-502
86	1	R '71, ch. 143, § 5		8	54-1908		3	56-503
87	1	R '65, ch. 4, § 1		9	54-1909 R '93, ch. 237, § 2		4	56-504
88	1—6	R '71, ch. 115, § 1					5	Emer.
89	1	63-1144		10	54-1910	138	1	31-2602
90	1	1-212		11	54-1911	139	1	Rplg.
	2	1-213		12	54-1912	140	1, 2	R '71, ch. 111, § 5
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	4	R '75, ch. 242, § 1		14	54-1914			37-806
	5	Emer.		15	54-1915		2	Validating
91	1—3	R '70, ch. 32, § 1		16	54-1916		3	37-308
	4	58-304		17	54-1917	142	1	Rplg.
	5	Rplg.		18	None		2	31-3106
	6	58-304 n.		19	54-1918	143	1	63-611
92	1—5	Appn.		20	54-1919		2	63-1103
93	1	43-701		21	54-1920		3	63-1105 R '89, ch. 100, § 4
94	1	67-3201 R '85, ch. 253, § 1		22	54-1921		4	63-1106 R '89, ch. 100, § 4
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				26	Rplg.	144	1	49-401 R '88, ch. 265, § 69
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147	1, 2	R '67, ch. 429, § 472	170	1	43-324		13	56-213
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150	1	19-2705 R '84, ch. 159, § 1	175	1	R '47, ch. 269, § 79		19	56-219
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	4	33-3707	14	1, 2	R '71, ch. 143, § 5	26	1	39-1001
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33	1, 2	R '67, ch. 429, § 472		9	42-1804		5	37-405
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	3	42-3309			25-1109	97	1	R '79, ch. 105, § 1
	4	42-3310		6	25-1109	98	1	R '49, ch. 274, § 4
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	6	42-3312		8	Rplg.	100	1	45-915
45	1	Rplg.		9	25-1114 R '88, ch. 75, § 1	101	1	67-3516
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1	1, 2	Appn.	2	8, 9	R '70, ch. 140, § 210	5	4	Emer.
	3	Emer.		10	Temp.			
2	1, 2	R '70, ch. 140, § 206	3	1—17	Temp.			
2	3—7	R '70, ch. 140, § 207	4	1—3	Appn.			
			5	1—3	Temp.			

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1	1, 2	Appn.	3	1—3	Appn.	6	1—7	Temp.
	3	Emer.	4	1—3	Appn.	7	1—6	Temp.
2	1—4	Temp.	5	1, 2	Spec.			

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1	1, 2	Appn.	22	1	ch. 143, § 5			R '96, ch. 421, § 23
	3	Emer.	23	1	R '71, ch. 111, § 5	3		39-2203
2	1	Spec.			R '79, ch. 105, § 1			R '96, ch. 421, § 23
3	1	Spec.	24	1	R '69, ch. 111, § 19	4		39-2204
4	1	43-307			R '79, ch. 105, § 1			R '96, ch. 421, § 23
	2	43-308	25	1, 2	ch. 429, § 472	5		39-2205
	3	43-309 —			42-2707			R '96, ch. 421, § 23
		43-312	26	1	Emer.			R '70, ch. 421, § 23
5	1	R '53, ch. 273, § 192	27	1	R '67, ch. 429, § 472	40	1	R '51, ch. 93, § 36
6	1	R '79, ch. 159, § 1	28	1	42-2301	41	1	R '79, ch. 41, § 1
7	1	43-207		2	42-2302	42	1	R '70, ch. 140, § 209
8	1	R '78, ch. 168, § 1	29	1	42-2303	43	1	23-304
9	1	31-3106	30	1	42-2304	44	1	Emer.
10	1	Spec.		2	R '78, ch. 60, § 1			R '70, ch. 149, § 1
11	1	R '67, ch. 161, § 10-102	31	1, 2	7-803	45	1, 2	R '70, ch. 149, § 1
11	1	161, § 10-102	32	1	31-808	46	1	R '76, ch. 95, § 1
12	1—4	42-214 n.	33	1	R '67, ch. 429, § 472	47	1	R '59, ch. 104, § 1
13	1, 2	R '50 (E. S.), ch. 50, § 26; '51, ch. 250, § 27	34	1, 2	R '79, ch. 105, § 7	48	1	67-3601
		**49-442			R '79, ch. 105, § 1		2	67-3602
14	1	Temp.	35	1	62-705		3	67-3603
15	1—16	9-206			Emer.		4	67-3604
16	1	43-306	36	1	73-108		5	67-3605
17	1	32-912			39-2201		6	R '69, ch. 176, § 10
18	1	R '69, ch. 113, § 9	37	1	R '96, ch. 421, § 23		7	67-3607
19	1	19-3938 R '89, ch. 82, § 1			39-2202		8	67-3608
20	1	R '77, ch. 170, § 9	38	1				
21	1	R '71, ch. 170, § 9	39	1				
22	1	R '71, ch. 170, § 9		2				

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	9	67-3609	74	2	38-402	87	1	ch. 136, § 55
	10	67-3610		3	38-403	88	1	40-2401 R '85, ch. 253, § 1
	11	67-3611		4	38-404		2	40-2402 R '85, ch. 253, § 1
	12	67-3612		5	38-405		3	40-2403 R '85, ch. 253, § 1
	13	67-3613		6	38-406		4	Rplg.
	14	67-3614		7	38-407	89	1	41-2201
	15	Emer.		8	38-408		2	41-2203
49	1, 2	R '71,		9	38-409		3	41-2205
		ch. 111, § 5		10	38-410		4	41-2223
50	1	3-409	75	1, 2	R '47,	90	1—8	R '76,
	2	Emer.			ch. 53, § 46			ch. 95, § 1
51	1	R '71,	76	1	72-1401	91	1	45-913
		ch. 111, § 5		2	**72-1403		2	Emer.
52	1	39-601		3	72-1403 R '79,	92	1	R '83, ch. 33, § 1
53	1	R '71,			ch. 147, § 11	93	1	R '71,
		ch. 2, § 1		4	**72-1421			ch. 124, § 2
54	1, 2	R '71,		5—7	**72-1406—72-1408	94	1, 2	R '57,
		ch. 124, § 2						ch. 218, § 13
55	1	39-607		8	**72-1411	95	1	72-913
56	1	15-708		9	R '80, c. 50, § 1	96	1	R '71,
57	1	66-901		10	**72-1425			ch. 124, § 2
58	1—6	R '63,		11—13	**72-1431—72-1433	97	1	42-223
		ch. 320, § 20					2	Emer.
59	1—4	Rplg.		14	**72-1447	98	1—4	R '69,
60	1	Rplg.		15	**72-1405			ch. 43, § 36
61	1	22-2411		16	72-1416 R '79,	99	1	**49-510
62	1	R '53,			ch. 147, § 11		2	Emer.
		ch. 273, § 192		17	**72-1422	100	1	33-2602, R '93,
63	1	42-222		18	**72-1426			ch. 186, § 1
	2	Emer.		19	R '80, c. 50, § 1	101	1	R '61,
64	1	1-1102		20	**72-1402			ch. 152, § 15
65	1	R '69,		21	R '80, c. 50, § 1	102	1, 2	R '76,
		ch. 113, § 3		22	**72-1410			ch. 95, § 1
66	1—3	R '71,		23	R '71,	103	1	R '49,
		ch. 143, § 5			ch. 124, § 2			ch. 72, § 34
67	1	* R '67,		24	72-1423	104	1—3	R '72,
		ch. 394, § 59		25	**72-1409			ch. 91, § 1
68	1	51-112 R '84, ch. 259, § 1		26	R '76,		4	R '74,
69	1	63-501			ch. 273, § 25			ch. 13, § 1
	2	63-502		27	**72-1472		5—8	R '72,
	3	63-503		28	**72-1424			ch. 91, § 1
	4	63-504		29	Emer.		9	R '74,
	5	63-505		30	R '74,			ch. 13, § 1
	6	63-506			ch. 59, § 1	105	1	R '72,
	7	63-507	77	1	59-502			ch. 401, § 4
	8	63-508	78	1	R '57,	106	1	32-801
	9	63-509			ch. 70, § 1			39-501 R '93, ch. 40, § 1
	10	63-510	79	1	R '49,		2	39-503 R '93, ch. 40, § 1
	11	63-511			ch. 128, § 2		3	39-504 R '93, ch. 40, § 1
	12	63-512	80	1—4	R '76,		4	39-511 R '93, ch. 40, § 1
	13	63-513			ch. 95, § 1		5	39-517 R '93, ch. 40, § 1
	14	63-514	81	1	39-1704 R '91, ch. 142, § 1	108	1	Temp.
	15	Rplg.			R '67, ch. 161, 10-102	109	1	56-201
	16	65-514 n.	82	1	R '67, ch. 161, 10-102		2	56-202
	17	Emer.	83	1	R '67, ch., 161, 10-102		3	56-203
70	1	R '79,			55-816		4	56-204
		ch. 105, § 1	84	1	R '49,		5	R '77,
71	1, 2	R '79,	85	1, 2	ch. 72, § 34			
		ch. 41, § 1	86	1	40-306 R '85, ch. 253, § 1			
72	1, 2	R '67, ch. 161, 10-102			40-307 R '85, ch. 253, § 1			
73	1—21	R '67, ch. 161, 10-102		2	R '71,			
74	1	38-401	87	1				

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	5	ch. 153, § 1	142	1	ch. 244, § 1	171	1—4	Temp.
	6	Rplg.	143	1	62-1201	172	1—7	R '67,
110	1	25-211		2	62-1202			ch. 161, § 10-102
111	1, 2	Temp.		3	62-1203	173	1—3	Appn.
112	1, 2	R '47,		4	62-1204	174	1, 2	Appn.
		ch. 29, § 1		5	62-1205	175	1	Appn.
	3	R '71,		6	62-1206	176	1	R '63,
		ch. 143, § 5		7	62-1207			ch. 13, § 236
	4—11	R '47,	144	1	62-406	177	1, 2	Appn.
		ch. 29, § 1	145	1—24	Temp.	178	1, 2	Appn.
113	1	14-117	146	1, 2	Appn.	179	1	Appn.
	2	14-118	147	1	72-921	180	1	25-801
	3	14-119	148	1, 2	Appn.		2	25-802
	4	R '71,	149	1, 2	Appn.		3	25-803
		ch. 111, § 23	150	1	R '79,		4	25-804
114	1	47-606			ch. 105, § 7		5	25-805
115	1	31-1435	151	1, 2	Appn.		6	25-806
116	1	R '74,	152	1—3	63-901 n.		7	25-807
		ch. 302, § 11	153	1—6	R '75,		8	25-808
					ch. 142, § 1		9	25-809
117	1—12	R '61, ch. 330,	154	1—3	R '63,		10	25-810
		§ 809			ch. 13, § 236		11	25-811
118	1	Rplg.		4	Appn.		12	25-812
119	1	R '71, ch. 124, § 2	154	5	R '63,		13	25-813
120	1	1-506			ch. 13, § 236	181	1—10	Appn.
	2	Emer.	155	1	R '71,	182	1—10	R '49,
121	1, 2	R '51, ch. 93, § 36			ch. 111, § 5			ch. 205, §§ 4, 5
122	1	40-412 R '85, ch.	156	1	R '50 (E. S.),		11—13	Temp.
		253, § 1			ch. 87, § 24	183	1—3	Appn.
123	1	R '70, ch. 140,	157	1	58-316	184	1—7	Appn.
		§ 207		2	58-320	185	1, 2	Appn.
124	1	R '63, ch. 13,	158	1	R '71,	186	1—11	Temp.
		§ 236			ch. 124, § 2	187	1, 2	Appn.
125	1	32-610	159	1	R '76,	188	1	42-2019
	2	R '80, ch. 378, § 1			ch. 95, § 1		2	Emer.
126	1	43-701	160	1	R '61,	189	1—4	Appn.
	2	Emer.			ch. 299, § 1	190	1—3	Appn.
127	1—5	67-1601 n.	161	1, 2	R '74,	191	1—7	Appn.
128	1	25-1107			ch. 34, § 1	192	1	61-212
129	1	R '63, ch. 217, § 1	162	1	R '63,		2	Eff. date
130	1—3	66-601 n.			ch. 290, § 29	193	1, 2	R '74,
131	1	59-501	163	1	R '73,			ch. 204, § 1
	2	Eff.			ch. 260, § 2		3	R '63,
132	1	R '63,		2	R '67,			ch. 334, § 3
		ch. 13, § 236			ch. 120, § 1		4—7	R '53,
133	1	40-405 R '84,		3	R '73,			ch. 63, § 5
		ch. 195, § 1			ch. 260, § 2		8—10	R '76,
134	1—6	41-101 n.			59-404		8-10	ch. 95, § 1
135	1, 2	R '70,	164	1	59-407		11	R '53,
		ch. 140, § 203		2	59-408			ch. 63, § 5
136	1	33-2815		3	59-917		12	36-423
137	1	67-2308		4	31-2013		13	Rplg.
138	1	R '65,		5	59-104	194	1, 2	R '73,
		ch. 152, §§ 7, 8		6	Emer.			ch. 260, § 2
139	1	R '71,		7	R '49,	195	1—9	Appn.
		ch. 143, § 5	165	1	ch. 274, § 4	196	1—3	Appn.
140	1, 2	R '67,	166	1—5	R '47,	197	1—3	Appn.
		ch. 429, § 472			ch. 128, § 2	198	1, 2	Appn.
141	1	R '63,	167	1	42-2014	199	1	R '76,
		ch. 13, § 236		2	Emer.			ch. 95, § 1
	2	R '49,			R '70,		2	R '69,
		ch. 249, § 1	168	1	ch. 149, § 1			ch. 88, § 10
	3	R '63,			63-105		3—5	R '76,
		ch. 13, § 236	169	1	60-108			ch. 95, § 1
142	1	R '47,	170	1				

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	6	R '55, ch. 22, § 1	202	5	ch. 185, § 4	205	1—21	R '50, (E. S.), ch. 11, § 3; R '74, ch. 211, § 22
	7—19	R '76, ch. 95, § 1		6—8	R '63, ch. 13, § 236			
200	1	28-103		9—12	R '51, ch. 216, § 11	206	1—3	R '55, ch. 95, § 1
201	1	Appn.	203	1—12	R '47, ch. 269, § 79	207	1—18	R '51, ch. 97, § 19
202	1—4	R '63, ch. 13, § 236	204	1, 2	R '67, ch. 429, § 472			
	5	63-906 R '81,						

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1	1—3	Appn.	21	1—3	Appn.	35	12-18A	ch. 13, § 236
2	1	R '55, ch. 234, § 10	22	1	65-501		19	Emer.
3	1	43-1901	23	1, 2	Emer.	36	1—14	Obsolete
	2	43-1902	24	1, 2	Temp.	37	1—4	Appn.
	3	43-1903	25	1, 2	Local	38	1	31-3601
	4	43-1904	26	1	Local		2	31-3602
	5	Emer.		2—9A	66-101		3	31-3603
4	1	43-1905			R '51, ch. 273, § 9		4	31-3604
	2	Emer.		10	Rplg.		5	31-3605
5	1	33-1011 n.		11	Emer.		6	31-3606
6	1, 2	Appn.	27	1	65-601		7	31-3607
7	1, 2	Appn.		2	65-602		8	31-3608
8	1, 2	Appn.		3	Emer.		9	31-3609
9	1, 2	Appn.	28	1	R '63, ch. 290, § 29		10	31-3610
10	1, 2	Appn.					11	31-3611
11	1	31-3411 R '92, ch. 83, § 2	29	1—3	Local		12	31-3612
12	1, 2	Appn.	30	1, 2	R '63,		13	31-3613
13	1, 2	Appn.	30	1, 2	ch. 290, § 29		14	31-3614
14	1, 2	Appn.	31	1—4	Appn.		15	31-3615
15	1—5	R '47, ch. 111, § 29	32	1—3	Appn.		16	31-3616
16	1, 2	Appn.	33	1, 2	Appn.		17	31-3617
17	1, 2	Appn.	34	1,2	Appn.		18	31-3618
18	1, 2	Appn.	35	1—8	R '63, ch. 13, § 236	39	1, 2	Appn.
19	1, 2	R '51, ch. 290, § 40		9	Appn.	40	1—3	Appn.
				10	Appn.	41	1, 2	Appn.
20	1, 2	Appn.		11	Appn.	42	1—3	Appn.
				12-18A	R '63,			

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1	1—3	Appn.	3	1—4	Temp.	5	1, 2	Appn.
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1	1—3	Appn.	34	1	ch. 111, § 5	53	16	20-216
2	1	67-406	35	1	R '71,		17	R '69,
	2	Emer.			ch. 111, § 5			ch. 419, § 5
3	1—5	R '69,	36	1	**45-614		18	20-218
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4	1	R '69,		3	Emer.		20	20-220
		ch. 42, § 36	37	1	14-408 R '88, ch.		21	20-221
5	1	R '70,			300, § 2		22	20-222
		ch. 140, § 207	38	1	R '71,		23	R '80, ch. 297, § 5
6	1	25-807			ch. 111, § 5		24	20-224
7	1—3	R '70,	39	1	R '71,		25	R '80, ch. 297, § 8
		ch. 145, § 8			ch. 111, § 5		26	20-226
8	1	60-109	40	1	67-701		27	20-227
9	1	42-605		2	67-702		28	20-228
10	1	59-1012 n.		3	67-703		29	R '70,
11	1	42-618		4	67-704			ch. 105, § 2
12	1	9-202		5	67-705		30	20-230
13	1	R '71,		6	67-706		31	R '80, ch. 297,
		ch. 111, § 3		7	67-707			§ 14
14	1	67-902		8	67-708		32	20-232
	2	Emer.		9	Emer.		33	20-233
15	1	R '71, ch. 111, § 5	41	1	R '74,		34	20-234
16	1	R '71,			ch. 40, § 1		35	20-235
		ch. 111, § 5		2	R '51,		36	20-236
17	1	10-606			ch. 273, § 9		37	20-237
	2	10-607	42	1	25-204		38	20-238
18	1	R '71,	43	1	R '79,		39	20-239
		ch. 111, § 5			ch. 105, § 1		40	20-240
19	1	Rplg.	44	1	Rplg.		41	20-241
20	1	R '71,	45	1	R '71,		42	20-242
		ch. 111, § 5			ch. 111, § 5		43	20-243
21	1	R '71,	46	1	19-2513		44	20-244
		ch. 111, § 5		2	Emer.		45	20-245
22	1	40-1606 R '85, ch.	47	1	R '71,		46	20-245 n.
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23	1—5	R '59,	48	1	R '79,	55	1	R '65,
		ch. 299, § 82			ch. 41, § 1			ch. 87, § 5
24	1	R '73,	49	1, 2	R '61,	56	1—3	R '51,
		ch. 121, § 3			ch. 330, § 809			ch. 290, § 40
	2	22-1211	50	1	R '61,		4	66-501
	3	Eff. date			ch. 330, § 809		5	66-502
25	1, 2	R '71,	51	1	R '61,		6	66-503
		ch. 111, § 5			ch. 330, § 809	57	1	R '51,
26	1	R '71,	52	1	R '61,			ch. 273, § 1
		ch. 111, § 5			ch. 330, § 809		2	R '49,
27	1	22-1911 R '88,	53	1	R '69,			ch. 132, § 2
		ch. 111, § 5			ch. 97, § 1		3—6	R '51,
28	1—4	42-214 n.		2	20-202			ch. 273, § 9
29	1	Rplg.		3	20-203	58	1—4	R '67,
	2	Temp.		4	20-204			ch. 43, § 22
	3	Appn.		5	20-205	59	1	67-2402
	4	R '71,		6	20-206		2—4	R '74,
		ch. 143, § 5		7	20-207			ch. 40, § 1
	5	Temp.		8	20-208		5	Eff. date
	6	Temp.		9	20-209	60	1	67-2701
	7	Emer.		10	20-210	61	1—9	R '61,
30	1	R '70,		11	20-211			ch. 330, § 809
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31	1	Spec.		13	20-213		1—3	R '61,
32	1	Spec.		14	20-214			ch. 330, § 809
33	1	22-1913		15	R '69,	63	1—12	R '61,
34	1	R '71,			ch. 419, § 3			ch. 330, § 809

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	6	57-1106 R '89, ch. 39, § 2	133	15	**39-1312	153	3	ch. 12, § 1
	7	57-1107		16	**39-1313		4	21-104
117	1, 2	R '77,		17	Appn.		5	21-105
117	1, 2	ch. 43, § 1		18	**39-1314		6	21-106
118	1, 2	R '70,	134	1	55-730		7	21-107
		ch. 221, § 1	135	1	R '61,		8	21-108
119	1, 2	R '76,			ch. 330, § 809		9	21-109
		ch. 88, § 1	136	1—5	67-1601 n.		10	21-110
120	1	R '71,	137	1	**49-443		11	21-111
		ch. 140, § 1	138	1	R '72,		12	21-112
121	1, 2	R '74,			ch. 401, § 4		13	21-113
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	3, 4	R '50 (E. S.),		2	38-602		15	21-115
		ch. 11, § 3		3	38-608		16	21-116
	5	R '74,	140	1	60-106		17	21-117
		ch. 211, § 22	141	1—3	R '63,		18	21-118
122	1	Rplg.			ch. 320, § 20		19	21-119
	2, 3	Spec.	142	1	R '71,		20	21-120
123	1	R '70,			ch. 124, § 2		21	21-121
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7	1—16	R '70, ch. 140, § 212	38	1	R '71, ch. 111, § 5	2	2	Emer.
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9	1, 2	R '67, ch. 429, § 472	40	1	58-414 R '85, ch. 254, § 1	67	1—4	R '61, ch. 330, § 809
10	1	R '70, ch. 140, § 211	41	1	58-411 R '85, ch. 254, § 1	5	5	R '55, ch. 220, § 21
11	1	43-319	42	1	47-704	6—11	6—11	R '61, ch. 330, § 809
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126	Rplg.		85	1	49-1801		11	38-1211
127	70-2004			2	**49-1101		12	38-1212
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56	1	Leg.	87	1	37-1901		14	38-1214
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	4	Emer.		5	37-1905		19	38-1218
57	1	72-1366		6	37-1906		20	38-1219
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58	1	**49-901(3)-(5)		8	37-1908		22	38-1921
59	1	Appn.		9	37-1909		23	38-1922
60	1	Appn.		10	37-1910		24	Sep.
61	1	Appn.		11	37-1911		25	Rplg.
62	1	Appn.		12	37-1912		26	Emer.
63	1	Appn.		13	37-1913	92	1, 2	R '76, ch. 95, § 1
64	1	42-2014, n.		14	37-1914		3, 4	Rplg.
65	1, 2	R '76, ch. 95, § 1		15	37-1915		5	R '76, ch. 95, § 1
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67	1	Appn.						

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	3	7-1104		12	1-2312		3	1-2219
	4	7-1105		13	1-2313		4	Eff.
	5	7-1106		14	1-2314	122	1	1-505
	6	7-1107 R '85, ch. 159, § 3		15	1-2315		2	Eff.
	7	7-1108		16	Eff.	123	1	1-601
	8	7-1109	104	1	1-2201	124	1	R '71, ch. 169, § 23
	9	7-1110		2	1-2202			
	10	7-1111		3	1-2203	125	1	8-103
	11	7-1112		4	1-2204		2	8-116
	12	7-1113		5	1-2205		3	8-202
	13	7-1114		6	1-2206		4	R '73, ch. 118, § 1
14, 15		7-1115 R '82, ch. 127, § 1; 7-1116 R '82, ch. 127, § 1		7	1-2207		5	R '75, ch. 242, § 1
	16	7-1117		8	1-2208		6	Eff.
	17	7-1118		9	1-2209	126	1	9-332
	18	7-1119		10	1-2210		2	9-711
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	20	7-1121		12	1-2212		10	9-1306
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	23	Sep.		15	1-2215	128	1, 2	R '77, ch. 105, § 3
	24	Eff.		16	1-2216	129	1	19-4530
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	26	71-1123, n.	105	1	1-1614		3	19-4532
94	1	33-3803, n.		2	Eff.		4	Sep.
	2	33-3803, n.	106	1	1-1903		5	19-4533
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95	1	Appn.		2	Eff.			R '94, ch. 207, § 1
96	1	67-2508	108	1	1-101		35—40	R '77, ch. 94, § 10
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97	1	20-201					43	Sep.
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	3	20-208	111	1—24	Rplg.	131	1	19-5001
	4	20-210		25	Eff.		2	19-5002
	5	20-217A	112	1	Rplg.		3	19-5003
	6	Emer.	113	1—14	Rplg.		4	19-5004
	7	39-3401—39-3411		15	Eff.		5	19-5005
98	1—11	R '89, ch. 237, § 1	114	1	R '75, ch. 242, § 1		6	19-5006
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	7	Eff.					3	66-904
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102	1	1-907	118	1	49-1115 R '83, ch. 25, § 15	135	1	54-832
	2	Eff.		2	Eff.		2	Emer.
103	1	1-2301	119	1	31-3002 R '89, ch. 43, § 1	136	1	19-4705
	2	1-2302		2	31-3004 R '89, ch. 43, § 1		2	19-4706
	3	1-2303		3	31-3010 R '89, ch. 43, § 1		3	19-4707
	4	1-2304		4	31-3011 R '89, ch. 43, § 1		4	Eff.
	5	1-2305		5	Emer.	137	1	73-213
	6	1-2306					2	Eff.
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	9	1-2309		2	Eff.	139	1	31-3201
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	3	25-3103		2	Emer.	186	1, 2	R '80, ch. 117, § 3
	4	25-3104	156	1	25-129	187	1	66-317
	5	25-3105		2	25-130	188	1	16-1504
	6	25-3106		3	25-131		2	16-1506
	7	25-3107		4	Rplg.		3	Emer.
	8	25-3108		5	25-132	189	1	R '75, ch. 264, § 1
	9	25-3109		6	25-132A R '90, ch. 137, § 1	190	1	**25-1160
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	14	25-3114	157	1	R '71, ch. 300, § 27	193	1	50-1029
	15	25-3115					2	Eff.
	16	25-3116	158	1	Appn.	194	1	33-4104
	17	25-3117	159	1—3	Appn.		2	33-4105
	18	25-3118	160	1	Appn.		3	33-4106
	19	25-3119	161	1	Appn.		4	Emer.
	20	25-3120	162	1	1-704	195	1	R '77, ch. 152, § 1
	21	25-3121	163	1	33-2006	196	1	49-1102
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	23	25-3122		2	Emer.		2	61-1102
	24	25-3123	165	1	**49-1012		3	61-1103
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	4	R '83, ch. 38, § 4	170	1	72-1346		11	61-1111
	5	57-130		2	72-1341		12	61-1112
	6	57-131		3	Emer.		13	61-1113
	7	57-132	171	1	67-5303		14	61-1114
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	9	R '86, ch. 116, § 1		3	67-5316		16	61-1116
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143	1	66-329		2	63-622		21	Emer.
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		R '94, ch. 428, § 15		5	R '69, ch. 324, § 6		2	Eff.
	3	59-1323		6	Emer.	200	1	58-406
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			176	1—9	R '71, ch. 327, § 15	202	1	39-3123
145	1—3	R '71, ch. 143, § 5					2	39-3124
146	1	Appn.	177	1	33-404		3	39-3125
147	1	R '71, ch. 169, § 23	178	1, 2	R '77, ch. 61, § 1		4	39-3126
			179	1	33-2110A		5	39-3127
	2	R '69, ch. 11, § 21		2	Emer.		6	39-3128
148	1	51-112 R '84, ch. 259, § 1	180	1	18-2808		7	39-3129
			181	1, 2	R '76, ch. 160, § 1		8	39-3130
149	1	38-134	182	1	R '79, ch. 105, § 1		9	39-3131
150	1, 2	R '71, ch. 124, § 2		2	Emer.		10	39-3132
151	1	R '69, ch. 111, § 19	183	1	1-2001		11	39-3133
				2	1-2001a		12	39-3134
152	1	33-312		3	1-2004		13	39-3135
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153	1	R '77, ch. 152, § 1		5	1-2009		15	39-3137
154	1, 2	R '71, ch. 143, § 5	184	1	**54-2602		16	39-3138
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	20	Eff.		28	41-804		4	Sep.
203	1	39-3301 R '90, ch. 116, § 1		29—34	R '72, ch. 164, § 7	224	1	Spec.
	2	R '76, ch. 311, § 2		35	R '70, ch. 127, § 2	225	1	1-2103
	3	39-3303 R '90, ch. 116, § 1		36, 37	R '72, ch. 164, § 7	226	1, 2	R '77, ch. 152, § 1
	4	39-3304 R '85, ch. 24, § 1		38	41-1104	227	1	Eff.
	5	39-3305 R '90, ch. 116, § 1		39	41-1217	228	1	Eff.
204	1	R '71, ch. 143, § 5		40	41-1220	229	1	61-505
	2	None		41	41-1232		2	Emer.
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205	1, 2	R '71, ch. 143, § 5		43	41-1236	231	1	40-2709 R '85, ch. 253, § 1
206	1, 2	R '71, ch. 143, § 5		44	41-1237		2	Emer.
207	1, 2	R '70, ch. 253, § 1		45	41-1305	232	1	R '71, ch. 173, § 18
208	1	34-2001A		46	41-1314			
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210	1	R '80, ch. 246, § 1		49	41-1840	235	1	R '71, ch. 169, § 23
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211	1	41-3104		52	41-1937	238	1	57-203
212	1	4-101		53	41-1938		2	57-210
213	1	22-1201		54	41-1939		3	57-222
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	3	22-1204		56	41-2008	239	1	48-306A
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	5	22-1207		58	41-2138	240	1	31-864
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	8	22-1210		61	41-2508	243	1	19-1309
	9	22-1211		62	41-2509	244	1	Rplg.
	10	22-1212		63	41-2510		2	57-715
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	6	41-313		70	41-3244 R '84, ch. 23, § 1		9	57-722
	7	41-315		71	41-3435		10	57-723
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	12	41-403	217	1	22-2726		15	Emer.
	13	41-404		2	22-2727	245	1	3-409
	14	41-601	218	1	33-124	246	1	R '74, ch. 301, § 2
	15	41-612	219	1	58-140, n.	247	1	16-1502
	16	41-703		2	58-140	248	1	R '71, ch. 143, § 5
	17	41-707		3	Eff.	249	1	57-1105A
	18	41-711	220	1	49-801 R '82, ch. 353, § 2		2	Emer.
	19	41-712		2	**49-619	250	1	50-1502, n.
	20	41-713		3—15	R '76, ch. 59, § 1		2	50-1514, n.
	21	41-714	221	1	54-2502, n.		3	50-1516, n.
	22	41-715		2	54-2506	251	1	R '79, ch. 228, § 1
	23	41-721		3	54-2509		2	Emer.
	24	41-722		4	54-2513	252	1	44-1701
	25	41-731		5	54-2514		2	44-1702
				6	54-2516		3	44-1703
				7	Rplg.		4	44-1704
			222	1	R '75, ch. 139, § 5		5	Sep.
			223	1	33-3715	253	1	**49-1314

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255	1	31-3707		5	47-1316		8	41-1428
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	3	53-2207		7	47-1318		10	41-1433
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256	1	Rplg.		11	47-1322		15	41-1438
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257	1	31-3106	283	1	59-1302		17	41-1440
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260	1	R '75, ch. 242, § 1	285	1	Appn.		4	31-4104
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261	1	63-3613	287	1	Appn.		6	31-4106
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273	1	67-808d	295	1	44-104		13	31-4113
274	1	42-3218		2	44-105		14	31-4114
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279	1	R '86, ch. 220, § 1			ch. 253, § 1		21	31-4121
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	4	42-1406			253, § 1	310	1	26-1802
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280	1	42-1710	299	1	16-1816A		3	26-1836
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	3	42-1712		2	R '86, ch. 313, § 6		5	26-1854
	4	42-1713	301	1	63-3702		6	26-1931
	5	42-1714	302	1	61-804		1	47-1206
	6	42-1715	303	1	42-108	311	2	47-1208
	7	42-1716		2	42-222		3	Rplg.
	8	42-1717	304	1	38-134		1	**49-2417
	9	42-1718	305	1	42-605	312	1	Appn.
	10	42-1719		2	42-607	313	1	42-222
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	12	Replg.	306	1	41-1401	314	1—5	R '71, ch. 295, § 1
281	1	47-1312		2	41-1402	315	1	R '79, ch. 18, § 6
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317	1	58-314		5	67-2742	356	1, 2	Appn.
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318	1	33-2005A		7	R '80, ch. 171, § 2	358	1	Appn.
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319	1	63-3002		11	67-2743E	360	1	Appn.
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